STAFF REPORT

CITY OF BEVERLY HILLS

For the Planning
Commission Meeting of
February 11, 2010

TO: The Planning Commission

FROM: Michele McGrath, Senior Planner

SUBJECT: **View Preservation in Trousdale Estates and the Hillside Area:** Continued discussions on potential view preservation standards within the Hillside and Trousdale areas of the City.

SUMMARY

In response to a request of the Board of Directors of the Trousdale Estates Homeowners Association, the City Council, on April 7, 2009, directed staff to consider regulations to protect views in the Trousdale Estates and Hillside Area that have been impaired by foliage. On May 28, 2009, the Planning Commission began a discussion of view preservation in these areas of the City. The Planning Commission and interested members of the public took a bus tour of the City's Hillside and Trousdale Estates Areas on June 25, 2009 with subsequent discussion of the issue (meeting minutes attached).

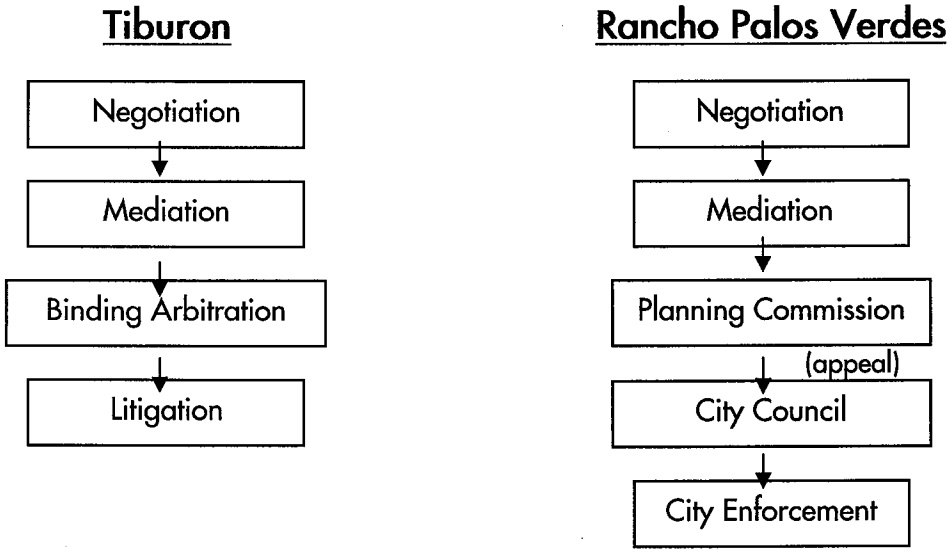
At the June, 2009 meeting (staff report attached), the Planning Commission noted this is a complicated issue involving different hillside areas of the City that have been developed in different ways and may require unique view preservation standards. In the interest of moving forward with an ordinance that could be completed more quickly to address residents' immediate concerns, the Planning Commission suggested starting with smaller steps rather than tackling all of the City's view preservation issues at once. If this is the Planning Commission's goal, staff suggests the Commission consider developing general policy language (intent/purpose), a simple review process and as much specificity with regard to issues such as the definition of "view," acceptable tree heights, and remedies for view impairment as the Planning Commission thinks are necessary at this time to accomplish this goal. In addition, The Planning Commission could discuss revisions to the City's landscape review requirements in the hillside areas to prevent inappropriate plantings thereby avoiding future view impacts while maintaining the safety and garden quality of the hillside areas.

This report responds to questions and comments from the two Planning Commission meetings, and provides a framework for the Planning Commission to proceed with regulations protecting views.

ISSUES

Review Process

The Planning Commission requested additional information regarding the two approaches to view preservation regulation summarized by staff in the May 28, 2009 staff report (attached). One approach is represented by the City of Rancho Palos Verdes (population 47,000) and is a more stringent ordinance with extensive City staff involvement. The other is represented by the Town of Tiburon (population 9,000) and is a guideline for a voluntary process requiring little City staff time. The Rancho Palos Verdes ordinance has been in effect since 1989, enacted by voter initiative. The town of Tiburon, in Marin County, enacted its ordinance in 1991. These two ordinances have a long history and have been unsuccessfully challenged repeatedly in court. They are also often cited by other cities in discussion of view preservation ordinances as representing the two ends of the spectrum; accordingly, they provide a helpful framework in which to evaluate view protection in Beverly Hills.



Both processes, like most view preservation review processes staff has reviewed, have as a first step a requirement that the complainant contact the owner of the encroaching foliage to attempt to negotiate a resolution. Should that prove unsuccessful, the second step common to these and most view preservation ordinances is mediation. The mediation can be conducted by City staff or a professional mediator. Rancho Palos Verdes contracts with a professional mediator and its ordinance compels neighbors to participate in a mediation

process by making such participation a required finding for the Planning Commission to approve a view preservation application if the mediation is unsuccessful. Rancho Palos Verdes staff estimates approximately a 90% success rate for its mediation process. The City had previously used volunteer mediators, but it was determined that their lower success rate warranted hiring a paid professional.

The Town of Tiburon requires that the parties mutually agree upon a mediator if mediation is accepted (it is voluntary) and the ordinance notes the County of Marin provides professional mediation services at a nominal cost. In cases where the initial reconciliation process has failed and where mediation was declined or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, the arbitrator to be chosen by the parties to the dispute. A copy of the arbitrator's report is filed with the City Attorney upon completion. The final remedy in the Tiburon process would be litigation.

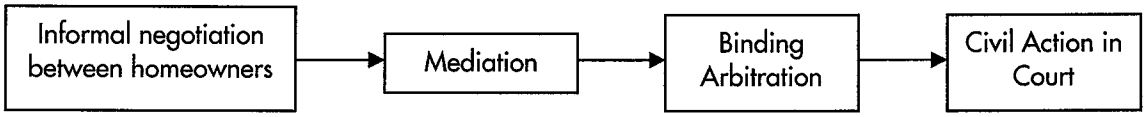
In response to the Planning Commission's request, staff had additional discussions with Rancho Palos Verdes and Tiburon staff to gain a better understanding of the view preservation review processes and the differences are striking. The City of Rancho Palos Verdes employs two full-time planners, a Senior Planner and an Associate Planner, who do nothing but handle view preservation cases pursuant to that City's 29-page view preservation guidelines. Rancho Palos Verdes determined this issue to be a priority and has allocated resources accordingly. While it is true that over time more view preservation cases in Rancho Palos Verdes have been handled through the mediation process thereby reducing the number of cases referred to the Planning Commission for review, the amount of work associated with maintaining views of property owners who have already been through the process has greatly expanded as more cases have been reviewed.

By contrast, the Town of Tiburon's view preservation guidelines, "View and Sunlight Obstruction From Trees," establish the City's policy with regard to view preservation and set out a process citizens may follow using private mediation services as selected by the parties involved; planners' only role is to provide the code section to those who inquire and to answer questions. This is a big difference from the past when in 1970 Tiburon was an early adopter of a view preservation ordinance that put the City in the middle of the review process. In 1991, overwhelmed by lawsuits and the staff time and money being spent, city officials replaced stringent rules with nonbinding guidelines that stress mediation. The Community Development Director stated that there are probably mixed feelings about the ordinance in the community but he gets few actual complaints and most disputes are resolved through the negotiation and mediation processes.

The Tiburon ordinance comes closer to the proposal made by the members of the Trousdale Homeowner's Association in that it relies entirely on civil actions between private parties to

carry out the requirements of the ordinance. In requesting that the City consider a view preservation ordinance, the Board of the Trousdale Homeowners Association had provided a general proposal to address its view preservation issues. The main points of the proposal include:

- Trees and other vegetation are not to obstruct the view of any other homeowner;
- The process is largely through progressive (i.e. escalating levels) of civil proceedings between neighbors:



- Costs of the proceedings and corrective actions are suggested to be borne equally by the parties, with maintenance being the responsibility of the owner of the landscaping;
- Landscaping on new development should be reviewed for height (no higher than neighbor's pad) and appropriateness of plant material.

City's Current Mediation Process

Some Planning Commissioners expressed concern that the Tiburon model may not be as friendly to residents as the Rancho Palos Verdes model because of the lack of City involvement in the process. If the Planning Commission is interested in pursuing the Tiburon model as a first step, the process could be made a little friendlier by using the City's existing mediation process. For approximately four years the City has offered a mediation service to City residents and businesses for complaints that are not regulated by the City's Codes but that, nonetheless, can impact the City and its citizens. These complaints include tenant-landlord issues, disputes between neighbors including trees and views, and resident or business complaints against the City. This is a voluntary conflict resolution process that is offered by the City to allow citizens a less onerous and more cost-effective way to resolve complaints short of binding arbitration or lawsuits.

The City contracts with Dispute Resolution Services (DRS), affiliated with the LA County Bar Association and composed of professional mediators. The service is currently free for the first few hours of mediation and a fee is charged for additional time with the cost to each party determined by the mediator. The Planning Commission also requested information about the success of mediation processes. Above is information about the Rancho Palos Verdes experience and following is information about the Beverly Hills experience.

Between January, 2008 and December, 2009, a period of two years, 54 cases were referred by the City to DRS, including cases involving views and trees. Once both parties agree to mediation, DRS has a high success rate, with 14 mediated cases resolved as compared with two mediated cases unresolved. According to the DRS mediators and City staff, the main problem with mediation, or any type of negotiation to resolve citizen complaints, is convincing the party against whom the complaint has been made to participate in the process. Of the 54 cases referred to DRS, 19 were closed due to an unwillingness of parties to participate in the mediation process. Three cases were resolved by the parties without DRS involvement, four cases involved the complainant changing his/her mind about moving forward with the complaint, six cases involved non-responsive parties and in one case the neighbor moved. For those parties who may be willing to negotiate, a big stumbling block can be difficulty in locating accurate contact information for the neighbor or a simple reluctance on the part of the complainant to contact the neighbor directly. In these cases, DRS can be particularly helpful by using its sources to locate neighbor contact information and initiating contact as a neutral third party. DRS staff stated that most Beverly Hills case related to trees have been resolved by telephone conference although not all such cases have been resolved as noted by a member of the public at a previous meeting. DRS does not provide binding arbitration services to Beverly Hills residents but such proceedings may be sought privately by citizens in accordance with State law.

It has been suggested by a number of the public speakers at the Planning Commission meetings, particularly with regard to Trousdale Estates, that one reason for the difficulty in convincing parties to negotiate is that the Codes, Covenants & Restrictions (CC&Rs) for Trousdale have expired. With no clear policy or guidance adopted by the City, citizens may not feel as compelled to negotiate with neighbors.

Proposed Standards

The May 28, 2009 staff report reviewed the various aspects of view preservation and this report will provide additional information pursuant to comments and questions at the two previous Planning Commission meetings.

Intent/Purpose

The Planning Commission may wish to discuss including an intent/purpose statement in a view preservation ordinance. A number of examples have been provided in other cities' ordinances included as attachments. Perhaps the most fundamental issue in a view preservation ordinance is defining "view" and developing standards to objectively evaluate potential view impacts. Is the ordinance intended to restore views back to a certain date? Is it intended to create or maintain unobstructed views? The definition of view is often included as part of the purpose statement as in several of the ordinances excerpted below:

City of Tiburon:

> "Establish the right of persons to preserve views or sunlight which existed at any time since they purchased or occupied a property from unreasonable obstruction by the growth of trees."

City of Laguna Beach:

> "Recognize that property owners are entitled to a process to resolve disputes related to view and sunlight access obstruction by trees or vegetation located within 500 feet of their property."

Ranch Palos Verdes:

> "Protects, enhances and perpetuates views available to property owners and visitors because of the unique topographical features of the Palos Verdes Peninsula. These views provide unique and irreplaceable assets to the City and its neighboring communities and provide for this and future generations examples of the unique physical surroundings which are characteristic of the City."

Expired Trousdale CC&Rs:

> "No hedge or hedgerow, or wall or fence or other structure shall be planted, erected, located or maintained upon any lot in such location or in such height as to unreasonably obstruct the view from any other lot or lots in said Tract."

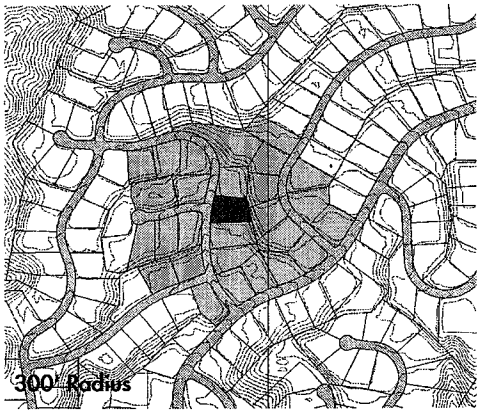
<u>View Timeline</u>

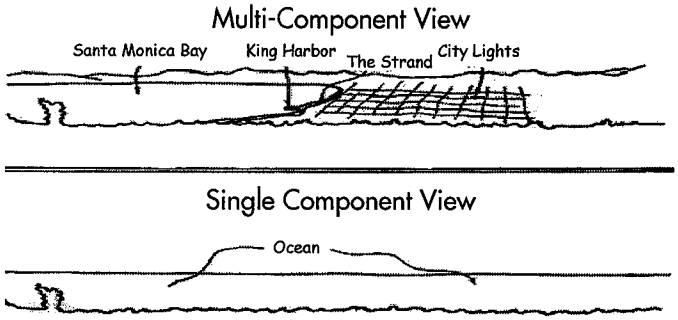
A big issue with many of the existing and contemplated ordinances is the date the views are established. Some ordinances use the date the home was purchased, some use the date the view ordinance was established. As vegetation changes over time, view restoration ordinances typically include a baseline point of reference which defines an entitled view. Rancho Palos Verdes, for example, sets this point at 1989, when the ordinance was enacted. In essence, the view that a residence had in 1989 is the view that residence is entitled to, and any corrective action on foliage does not have to provide any greater vista than that baseline. For Tiburon, the baseline is when a residence (the one with the view) was purchased. In order to establish an entitled view, photo documentation is usually required which includes some proof of when the photographs were taken. It gets more complicated. What if there is no physical evidence of a pre-existing view? Can a newly created lot create

a view? What if a property owner had a view, but wants to improve it? What if a property owner has physical evidence of a pre-existing view and wants it restored? Restored to what and when? Should the view be restored to when the lot was created, the property purchased, the effective date of the ordinance or the date the city was incorporated?

Defining "View"

As discussed in the May, 2009 report, in much of the Hillside Area (and some parts of Trousdale), the views afforded the residents are of the neighborhood and the local setting. If it is the distant, panoramic views that are intended to be protected, it is suggested that a distinction between "near views" and "far views" be made, wherein the regulations can then focus on the distant views. Alternatively, the Commission could define a radius of proximity to the view site. Beverly Hills' view preservation regulations, which only apply to structures, utilize a 300-foot radius. The mediator for Rancho Palos Verdes suggests a 300 to 500 foot radius, though some cases included distances as great as 1,000 feet.





From Rancho Palos Verdes Guidelines & Procedures

Defining "view" also involves defining a "view area", the area from where a person observes the view. Examples of where a view is protected could include living rooms, bedrooms, and other primary living areas (as opposed to closets, bathrooms, garages, hallways, etc.), and balconies, patios, and yards outside of the residence.

Addressing an Impaired View

Most view preservation ordinances have similar remedies for addressing an impaired view as there are only so many ways to safely and effectively remove or trim trees. Besides the removal of trees or shrubs impairing a view, a number of other techniques for reducing the impediments are commonly employed. These include: culling, lacing, windowing, trimming and topping although this latter method can have deleterious effects on a tree's health, appearance, and maintenance and removal/replacement can be a preferable alternative.

Standard for Tree Height in Trousdale

Rather than try to define the view for each lot, it has been suggested that the Commission at this time could look at a variety of thresholds to determine maximum allowed foliage height. Representatives of the Trousdale Homeowners Association included in their view preservation proposal a maximum tree height for Trousdale consistent with the height of the nearest upslope pad. This is a standard that is simple and fairly easy to understand and apply. Other members of the public have expressed strong views that the maximum tree height standard should not be based on the nearest upslope pad but trees should be measured from the level pad on the same site and should not exceed the maximum structure height of 14 feet. In further conversation with residents expressing this view, staff understands that the immediate concern is about trees planted on slopes near common property lines such that encroachment of tree limbs and branches onto the neighbor's property is a problem. (The City currently has regulations addressing this issue.) The other concern appears to be the potential for trees and vegetation on slopes to eventually impede views if appropriate species are not planted and the plantings are improperly maintained.

Landscape Review

On the bus tour the Commission expressed concern about fire and slope stability issues resulting from planting certain trees and vegetation in hillside areas, particularly on slopes. This relates to view preservation in that it addresses vegetation in the hillsides but it may also be part of a broader issue as to how the City should regulate landscaping on private property to maximize positive impacts and minimize negative impacts related to water conservation, fire safety, slope stability and sustainability (greenhouse has emissions).

The City has a number of code sections that address landscaping. In the Zoning Code, landscape plans are reviewed for new single family home development in Trousdale and the Hillside Area (Code sections attached). This does not include landscaping on a single-family site that is remodeling less than 50 percent of the main residence.

The City's recent water conservation and landscape ordinance requires the review of landscape plans except for the following which are exempted:

A. Projects which involve alterations or additions to, or retrofits of, existing residential, commercial or public structures or facilities, unless the Landscape Area is altered as defined in Section 9-4-403.

B. Projects with a Landscaped Area of less than two thousand five hundred (2,500) square feet.

C. Landscaping that is part of a property listed on any applicable local, state or national register of historic places.

D. Plant collections as part of gardens and arboretums open to the public.

This would exempt many if not most single family residential landscape projects. As stated in a previous staff report, the City regulates certain large trees or groves of trees on private property. Finally, the Fire Code requires brush clearance and the proper management of certain trees that could be a fire hazard pursuant to the section below:

Vegetation Management.

13.Maintain all landscape vegetation, including, but not limited to, conifers (e.g., cedar, cypress, fir, juniper, and pine), eucalyptus, acacia, palm and pampas grass in such a condition as not to provide an available fuel supply to augment the spread or intensity of a fire.

The Commission may wish to discuss whether the City's Codes regarding landscaping should be reviewed to allow for at least staff-level review of all trees planted in hillside areas or to require the submittal of a landscape plan for landscape remodels above a certain square footage. Some cities, such as Corte Madera, have prohibited the planting of certain trees deemed to be nuisances or fire hazard such as those below:

Potential Nuisance Trees:
Eucalyptus, Monterey cypress, juniper, acacia and Lombardy poplar.

Attachments:
June 25, 2009 Planning Commission Meeting Minutes
June 25, 2009 Planning Commission Staff Report
May 28, 2009 Planning Commission Staff Report
Letter from Charles and Andrew Flack, June 3, 2009

View Preservation Proposal, Trousdale Homeowners Association
Rancho Palos Verdes Ordinance
Tiburon Ordinance

June 25, 2009 Planning Commission Meeting Minutes

View Preservation

CITY OF BEVERLY HILLS
455 N. Rexford Drive
Beverly Hills, California 90210
Room 280-A

PLANNING COMMISSION REGULAR MEETING
June 25, 2009
1:30 PM

MINUTES

OPEN MEETING

ROLL CALL AT 1:37 PM

Commissioners Present: Corman, Furie, Yukelson, Vice Chair Bosse and Chair Cole.

Commissioners Absent: None.

Staff Present: J. Lait, D. Reyes, S. Rojeman, I. Nguyen, L. Sakurai, M. McGrath, P. Noonan, J. Stevens (Department of Community Development); D. Snow (City Attorney's Office).

APPROVAL OF AGENDA

The Chair noted items would be taken out of order if the first item was completed before the bus arrived at 2:15pm.

INTRODUCTION OF SUSAN HEALY KEENE, AICP, DIRECTOR OF COMMUNITY DEVELOPMENT

COMMUNICATIONS FROM THE AUDIENCE

OLD BUSINESS

1. **50 La Cienega Boulevard (Applicant: Perry Cohan)**
Development Plan Review for open air dining on private property and Extended Hours Permit for a vacant restaurant space located at **50 North La Cienega Boulevard** – continued from June 11, 2009. (Assistant Planner: Shena Rojemann)

Assistant Planner Rojeman provided a summary of the staff report and it was made a part of the record. She noted that the existing 3-story building had existing non-conforming parking, but that valet service would be provided for the proposed restaurant; and stated that the existing awnings would remain. She also reviewed the concerns expressed by the Commission at the previous meeting and the applicant's proposed mitigation actions in response to the concerns.

INFORMATION

7. Active Case List

There was no discussion on this item

The Commission recessed to the Bus Tour at 2:15pm.

THE Commission returned from the bus tour at 5:10pm. All Commissioners were present.

DISCUSSION

2. View Preservation and Design Review in the Trousdale Estates and Hillside Areas

Follow-up discussion from the bus tour of Trousdale Estates Area and the Hillside Area of the City and possible direction to staff toward development of regulations addressing restoration of views impaired by foliage in these areas and/or development of regulations extending design review to these areas.

Principal Planner Sakurai asked if there was additional information the Commission would like to have that would aid their deliberations.

Frieda Berlin, a resident, stated the CC&Rs never specified the height of the trees, it said "trees that had grown into a hedgerow across your view." She added, the good thing about having it in the CC&Rs was that you could show them to the judge if you sued your neighbor. Ms. Berlin noted that in the past some neighbors had worked together and split the cost of tree trimming; and sometimes the neighbor said no, in which event the neighbor requesting tree trimming had to sue. There were several lawsuits in the area and sometimes they were won.

Karen Platt, resident, reminded the Commission that the language of the CC&Rs about the trees was included in the meeting packet - but the language is legally vague "... as to unreasonably obstruct the view...." And asked, what does unreasonably obstruct mean? We are looking for an ordinance with a standard that can be applied.

Brothers, Dr. Andrew & Mr. Charles Flack, residents, summarized their experience. They stated they went through the mediation process and when it didn't work out they hired a lawyer, which cost thousands of dollars. The City needs to have an ordinance that would work and be enforceable. They added that it should require a covenant recorded on the land so that any new owner would be aware of it.
The Commission discussed features a program would include such as setting clear standards for civil enforcement, negotiation and mediation as a way to settle disputes before binding arbitration and/or lawsuits. Safety concern was expressed

as the arborist pointed out that some trees aren't right for the slope and are a safety issue. It was noted that a program for the hillside area might not work in Trousdale, and vice-versa.

The Commission requested staff get copies of the programs in place at Tiburon and Palos Verdes and any feedback from those Cities for further discussion and study at a future meeting of the Commission.

The following were heard beginning at 7:15pm, all Commissioners were present.

3. **City of Beverly Hills General Plan – Draft Goals and Policies**
Discussion of Draft Goals and Policies for Public Services and Infrastructure
The Planning Commission will review goals and policies from the 2008 Draft General Plan regarding public services and infrastructure (including mobility) and provide direction to staff. The City will proceed with a public process to update the General Plan over the summer.

The staff report was summarized by Associate Planner Noonan and he then reviewed the current schedule for the General Plan review.

The Commission provided corrections to the draft Goals and Policies for Public Services and Infrastructure. It was noted the Planning Commission will review the final draft Goals and Policies in early August.

RETURN TO ORDER:

5. **Project Preview: New Medical Building at 121 San Vicente Boulevard**
A proposed new 3-story, 45-foot in height, 40,342 square-foot, medical building with ground floor retail uses over two levels of subterranean parking was presented to the Planning Commission. A formal public hearing will be held regarding this item pending completion of the required environmental analysis.

Senior Planner McGrath provided a summary of the staff report. She noted the applicant will be requesting two variances and a DPR.
Assistant City Attorney Snow reminded the Commission that this is a project preview, not a public hearing, so there would be no discussion of whether findings can be made; the purpose of the preview is to find if there are issues that would require additional analysis for the public hearing on the project.

Ken and Rick Stockton of Ken Stockton Architects presented the proposed project details and stated they hoped to attain LEED Gold certification, and many details need to be designed early in the project in order to include them and qualify for the certification. The noted they have a LEED certified designer in company who was involved in pre-planning; and noted that transportation credits would be earned by achieving less vehicular trips through the use of alternative transportation methods and a comprehensive traffic management plan.

June 25, 2009 Staff Report
View Preservation

STAFF REPORT

CITY OF BEVERLY HILLS

For the Planning
Commission Meeting of
June 25, 2009

TO: The Planning Commission

FROM: Larry Sakurai, Principal Planner

SUBJECT: **View Preservation and Design Review in the Trousdale Estates and Hillside Areas:** A bus tour of Trousdale Estates Area and the Hillside Area to provide context to the Planning Commission's informal discussions currently underway on the view preservation and design review standards for these areas of the City

SUMMARY

On June 25, 2009, the Planning Commission will take a bus tour of the City's Hillside Area and the Trousdale Estates Area. The purpose of the tour is primarily to view examples how foliage interferes with hillside views and secondarily, how hillsides affect design review of single-family residential development.

ISSUES

View Preservation

At its May 28 meeting, the Planning Commission began its consideration of how panoramic views could be protected from impairment by foliage. Under consideration are proposals that rely initially on negotiation between private parties to address the subject foliage, with either a legal or public process to resolve issues that cannot be resolved between parties. Issues raised at that discussion included:

- Issues differ between Trousdale and the Hillside Area
- A view can be composed of a number of elements, near and far
- A view depends on vantage point
- A view can be affected by non-contiguous property
- There are a number of options for mitigating impairment by foliage
- Trees can be both an impediment and a contributor to view

- Protecting/restoring view can compete with privacy and other issues
- Restoration of view could affect as much as nine years of growth

Design Review

At its June 11 meeting, the Planning Commission began its consideration of the extension of R-1 design review into the Hillside Area and the Trousdale Estates Area. The main objective of R-1 design review is to protect the character of neighborhoods. Issues raised at that discussion included:

- Trousdale's height and off-pad restrictions already substantially protect its character
- Hillside character is not as defined by development as it is the Central Area
- Aspects of residential development other than the front visually affect hillside areas
- Architectural style, purity, and consistency is limited as a factor in hillside character; therefore...
- Use of a style catalogue in determining the level of review may not be valid in the hillside area

BUS TOUR

12 sites/views have been selected for the tour. Staff will point out various issues as the tour proceeds. After the bus returns to City Hall, staff would like to debrief the Commission.

NEXT STEPS

Full discussion of design review was postponed to a later date when the full Commission was available to have the discussion. This is tentatively scheduled for the Commission's next meeting on July 9. Points made on the tour could be further discussed together with the other issues introduced in the June 11 staff report.

Staff will take the bus tour comments and consult further with other agencies experienced with view preservation. The next discussion on view preservation is tentatively scheduled for July 23.

Attachments:
Tour Itinerary
May 28, 2009 Planning Commission Staff Report (View Preservation)
June 11, 2009 Planning Commission Staff Report (Extension of R-1 Design Review)

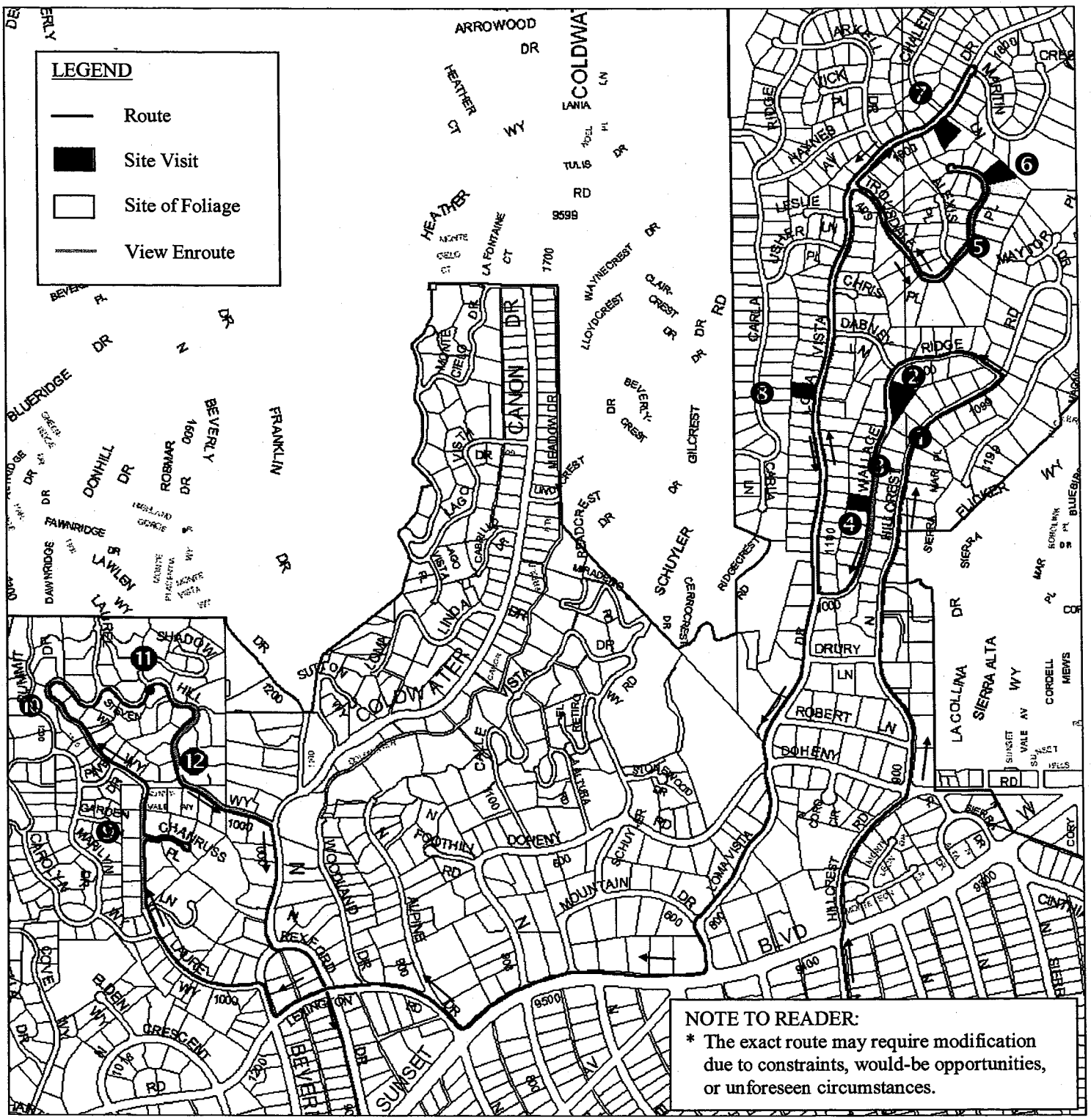
Tour Itinerary

Bus Tour Route*

Planning Commission Meeting

June 25, 2009 at 2:00 p.m.

Trousdale Estates Area • Hillside Area
View Preservation • R-1 Design Review



NOTE TO READER:
* The exact route may require modification due to constraints, would-be opportunities, or unforeseen circumstances.

May 28, 2009 Staff Report
View Preservation

STAFF REPORT

CITY OF BEVERLY HILLS

For the Planning
Commission Meeting of
May 28, 2009

TO: The Planning Commission

FROM: Larry Sakurai, Principal Planner

THROUGH: Jonathan Lait, AICP, City Planner

SUBJECT: View Preservation in the Trousdale Estates and the Hillside Areas

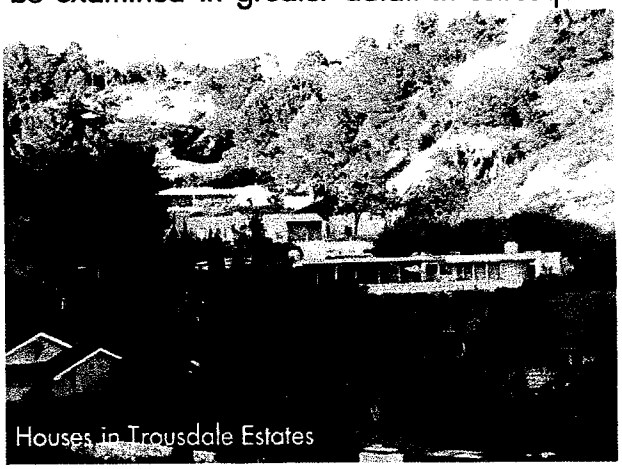
INTRODUCTION

In response to a request of the Board of Directors of the Trousdale Estates Homeowners Association, the City Council on April 7, 2009 directed staff to consider regulations to protect views in the Trousdale Estates Area and the Hillside Area. At issue in particular is how trees can eventually impair the views from private residences when their growth is not managed to protect these views. This future ordinance, if adopted, is not directed at this time toward building or other improvements; it only focuses on trees and landscaping.

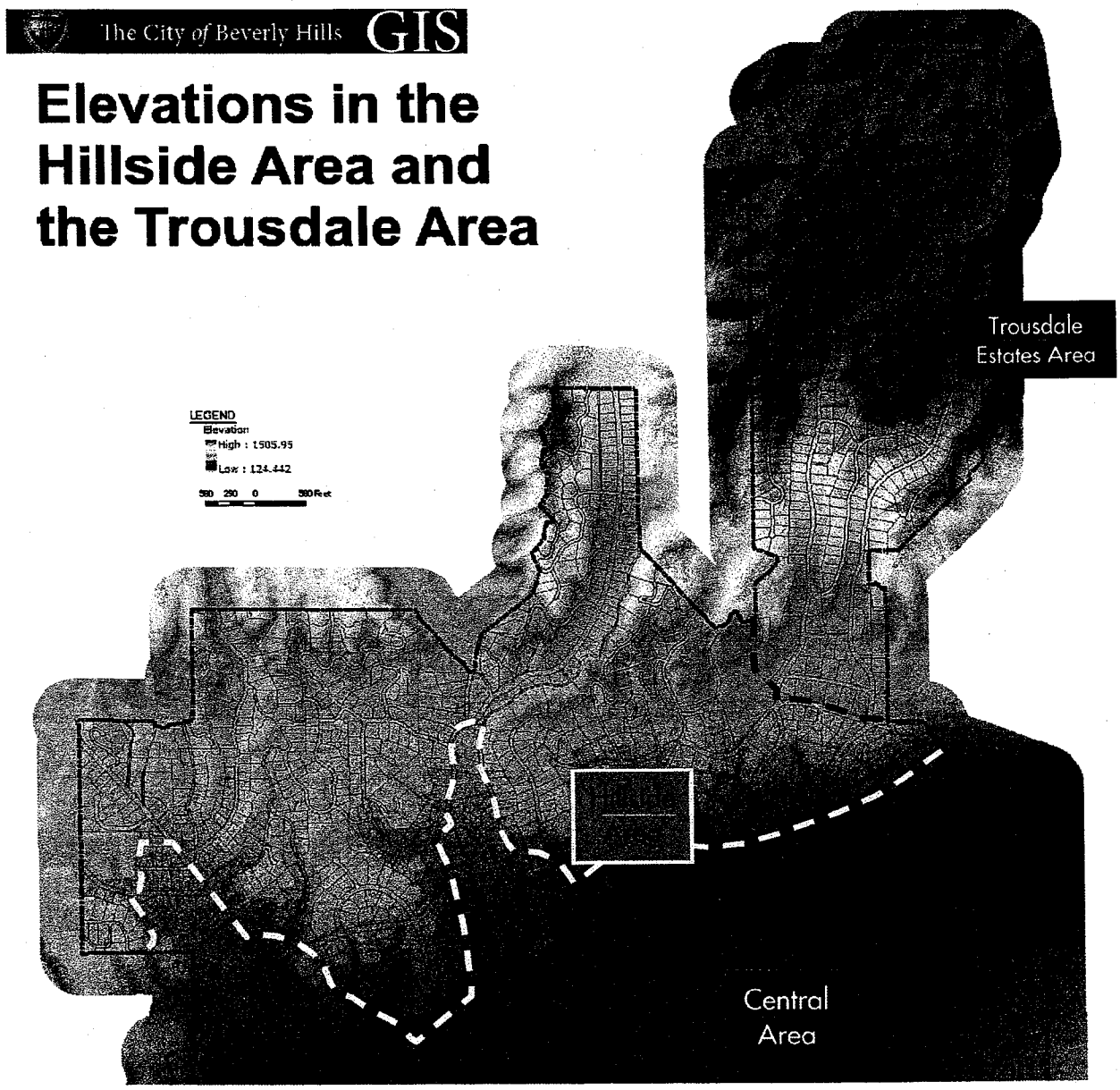
The purpose of this report and study session is to begin a discussion between the Planning Commission, the public and staff to evaluate the appropriateness of a future view preservation ordinance, the geographic areas of the city in which it would apply and to formulate regulations, as appropriate. There are advantages and disadvantages to such regulations which are highlighted in this report and will be examined in greater detail in subsequent reports.

BACKGROUND

The Trousdale Estates Area was developed during the late 1950s and early 1960s and it possesses a distinct character that is the result of the original development of the tracts that make up the Area. Virtually all of the lots in the Trousdale Area consist of a


Houses in Trousdale Estates

level building pad and a 2:1 slope[a] in between the pads, which are sized in a manner that generally provides a view from each lot. Lots in the Trousdale Estates Area originally included Covenants, Conditions, & Restrictions (CC&Rs) that protected the views from its lots. These CC&Rs lapsed in 2000. During the 1980s the City instituted zone standards for



[a] 2:1 slope means that the ground rises (or falls) one foot for every two feet of horizontal distance. This ratio is an engineering convention that provides slope stability. Steeper slopes generally require more engineering to stabilize them and prevent slides.

Trousdale that limited heights to 14 feet and prohibited development off of the building pads, which essentially maintains the building envelopes of original tract development. There is, however, no similar City standard in Trousdale with respect to landscaping.

Marilyn Drive in the Hillside Area

The Hillside Area of the City does not possess the same ordered terrain as the Trousdale Estates Area. Compared to Trousdale, the Hillside Area has proportionately fewer "view lots" (those that have a panoramic view of the city) and is generally lower in elevation than Trousdale. While there are many lots in the Hillside Area that possess a panoramic city vista, the orientation of the hillsides in the area are generally more varied than in Trousdale and much of the character of the Hillside Area provides more of an idyllic hill-and-canyon setting. As such, landscaping tends to function in different roles between the two Areas. It should be noted the above discussion is a broad and general characterization, as neither the Trousdale Estates Area nor the Hillside Area is a homogeneous setting. The Trousdale Board has suggested that the Planning Commission could take a bus tour of the Trousdale Area. Including the Hillside Area on such a tour could allow the Commission to compare and contrast the areas and see how regulations might apply to different settings.

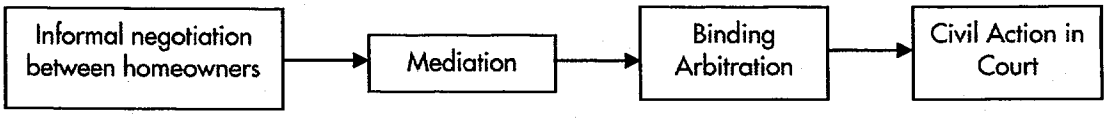
It should be noted that Beverly Hills does preserve views in the Hillside Area, but its regulations apply to structures rather than foliage. Whenever a structure is proposed with a height in excess of 14 feet, it is checked against the lines of sight from the properties upslope from it. If there appears to be a view issue (e.g., more view is blocked compared to existing development, the case proceeds through a Hillside R-1 Permit public hearing process (Planning Commission). View impacts can be onerous to ascertain, requiring the applicant to obtain considerable topographic information and at times, access to a neighboring property is warranted.

DISCUSSION

In requesting that the City consider a view preservation ordinance, the Board of the Trousdale Homeowners Association had provided a general proposal (attached) for addressing its view preservation issue. The main points of the proposal include:

- Trees and other vegetation are not to obstruct the view of any other homeowner;

- The process for is largely through progressive (i.e. escalating levels) civil proceedings between neighbors:



- Costs of the proceedings and corrective actions are suggested to be borne equally by the parties, with maintenance being the responsibility of the owner of the landscaping;

- Landscaping on new development should be reviewed for height (no higher than neighbor's pad) and appropriateness of plant material.

- In addition, the Board requests that street trees be addressed (outside of a zoning ordinance).

Staff consulted with the staff of Rancho Palos Verdes regarding its view preservation/restoration ordinance. Rancho Palos Verdes has had an ordinance in effect since 1989, enacted by the voter initiative. Staff has also reviewed the ordinance adopted (1991) by the City of Tiburon,[b] a town in Marin County on a peninsula in San Francisco Bay. This ordinance comes closer to the Board's proposal than the Rancho Palos Verdes Ordinance in that it relies entirely on civil actions between private parties to carry out the requirements of the ordinance. These two ordinances have a long history and have been unsuccessfully challenged repeatedly in court. Accordingly, they provide a good framework in which to evaluate view protection in Beverly Hills. Other city ordinances have and will continue to be evaluated throughout the Planning Commission's consideration of these issues.

Views: Definition and Restoration

Perhaps the most fundamental issues in a view preservation ordinance are defining what a view is and developing standards to objectively evaluate potential view impacts. The Board's proposal indicates that "unrestricted views" are desired. But in much of the Hillside Area (some parts of Trousdale as well), the views afforded the residents are of the neighborhood and the local setting. If it is the distant, panoramic views that are intended to be protected, it is suggested that a distinction between "near views" and "far views" be made, wherein the regulations can then focus on the distant views. The distinction can be important because in areas where a distant view is not an issue, vegetation can be an asset that contributes positively to the local setting. The definitions in the Rancho Palos Verdes ordinance provides an example:

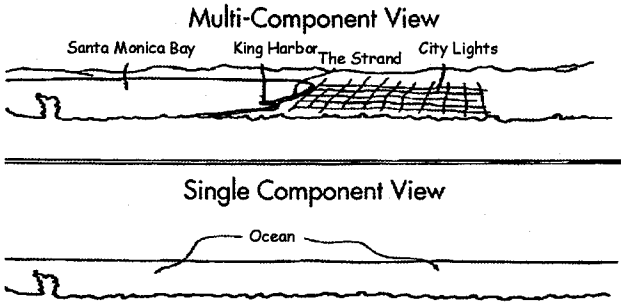
[b] The Malibu Country Estates View Restoration & Preservation Ordinance is similar, and the Sausalito Ordinance follows similar procedures.

"On the Palos Verdes Peninsula, it is quite common to have a near view and a far view because of the nature of many of the hills on the peninsula. Therefore, a 'view', which is protected by this section, is as follows:

a. A 'near view' which is defined as a scene located on the peninsula including, but not limited to, a valley, a ravine, equestrian trail, pastoral environment or any natural setting; and/or

b. A 'far view' which is defined as a scene located off the peninsula including, but not limited to, the ocean, Los Angeles basin, city lights at night, harbor, Vincent Thomas Bridge, shoreline or off shore islands."

In a Beverly Hills ordinance, different landmarks would be identified in defining a "far view". The Rancho Palos Verdes ordinance also specifies elements of view that aren't protected under the ordinance, such vacant developable lots, sky over distant landmarks, and distant mountains that are visible only under rare meteorological circumstances. Defining "view" also involves defining a "view area", the area from where a person observes the view. Examples of where a view is protected could include living rooms, bedrooms, and other primary living areas (as opposed to closets, bathrooms, garages, hallways, etc.), and balconies, patios, and yards outside of the residence.



From Rancho Palos Verdes Guidelines & Procedures

One other aspect of view is defining when a view is impaired. Minor encroachments into a view might not warrant action. Both Tiburon and Rancho Palos Verdes consider whether significant elements/landmarks are blocked in the vista. Rancho Palos Verdes also considers the position of the vegetation in the view (e.g. in the middle or at the edge).

Besides the removal of trees or shrubs impairing a view, a number of other techniques for reducing the impediments are commonly employed. These include:

- Culling: the removal of dead, decayed, or weak limbs or foliage from a tree or shrub.
- Lacing: a comprehensive method of pruning that systematically removes excess foliage from a tree or shrub, where the plant maintains its shape.

- Windowing: A form of thinning by which openings or "windows" are created to restore views.

- Trimming: Removal of limbs or foliage from a tree or shrub, typically done when the obstruction is minor and maintenance is assured. There are two forms of trimming of note:

  - "Crown reducing," which is a comprehensive method of pruning that reduces a tree's or shrub's height and/or spread. It entails the reduction of the top, sides, or individual limbs by means of removal of leader.

  - "Crown raising," which is a comprehensive method of pruning that removes limbs and foliage from the lower part of a tree or shrub in order to raise the canopy of a tree or shrub over the view.

- Topping: Cutting of branches and/or trunk of a tree or shrub in a manner which substantially reduces the overall height. Topping can have deleterious effects on a tree's health, appearance, and maintenance. It frequently results in stump growth, and removal/replacement can be a preferable alternative.

In considering corrective measures such as those above, factors that often come into play include, among others:

- The effects on the health of the tree,

- Potential effects on slope stability (particularly with tree removal),

- Potential environmental effects such as raptor nesting, impact on migratory birds, carbon footprint implications,

- Effects on trees as an asset (financial value of trees).

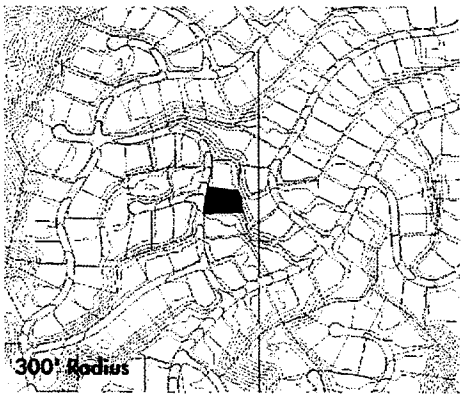
As vegetation changes over time, view restoration ordinances typically include a baseline point of reference which defines an entitled view. Rancho Palos Verdes, for example, sets this point at 1989, when the ordinance was enacted. In essence, the view that a residence had in 1989 is the view that residence is entitled to, and any corrective action on foliage does not have to provide any greater vista than that baseline. For Tiburon, the baseline is when a residence (the one with the view) was purchased. In order to establish an entitled view, photodocumentation is usually required which includes some proof of when the photographs were taken. For the Rancho Palos Verdes ordinance, film negatives often served this purpose. In the age of digital photography, proof could be more difficult since digital file information can be manipulated. It's common that photographs don't coincide

with the baseline date. In these cases, the date of the photographs then serve as the baseline, provided that it's no earlier than baseline established by the ordinance (as a residence is not entitled to any earlier views than those established by the ordinance). The baseline view issue is more likely to be an issue in the Hillside Area. The Trousdale Estates Board points to its CC&Rs as a point of reference in terms of what restorative action is supposed to achieve:

> "No hedge or hedgerow, or wall or fence or other structure shall be planted, erected, located or maintained upon any lot in such location or in such height as to unreasonably obstruct the view from any other lot or lots in said Tract."

It should be noted that if the Trousdale CC&Rs are utilized as the baseline for views, corrective action could result in addressing nine years of growth in some cases. The Board has also suggested some basic entitlement for the owner of the landscaping of 14 feet in height measured from the building pad, or the level of the neighboring uphill building pad, whichever is higher. Rancho Palos Verdes allows 16 feet or the ridgeline of the roof, whichever is less.

One other issue is the proximity to the view site. In general, view regulations are seen as an issue between neighboring properties. However, in hilly terrain, properties thousands of feet away can have some effect on view, and in absence of some proximity criteria, cases could involve parties substantial distances apart. Beverly Hills' view preservation regulations, which only applies to structures, utilizes a 300-foot radius. The mediator for Rancho Palos Verdes suggests a 300 to 500 foot radius, though some cases included distances as great 1,000 feet.



Competing Issues

Among the most challenging aspects of a view preservation ordinance is the balance between someone's right to views with another person's right to privacy. Privacy is cited as a consideration in remedial action in Tiburon. Unreasonable infringement of privacy is addressed in findings in Rancho Palos Verdes. Due to the uniqueness of each circumstance, the issue is addressed on a case-by-case basis, but there is little definition as to what an unreasonable infringement of privacy may include.

Trees and landscaping are integral to a neighborhood setting. Cases are likely to arise where trees that are cherished in a neighborhood are the subject of view preservation actions. Since 1993, the City has protected trees in the community, in particular:

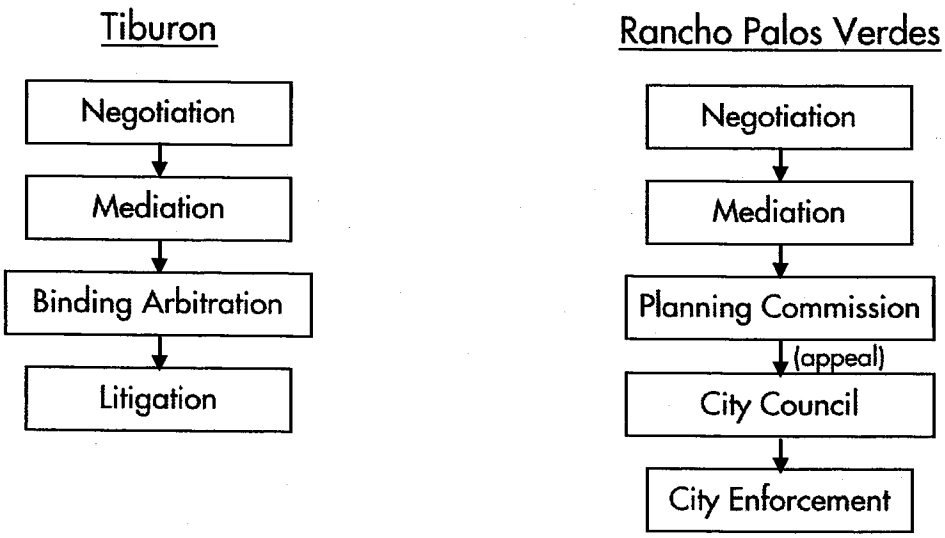
- Native trees with a trunk diameter of 24 inches or greater,
- Large trees with a trunk diameter of 48 inches or greater ("heritage trees"), and
- Groves of 50 or more trees.

In general, the ordinance addresses damage or removal of trees between the street and the residence, though groves are protected anywhere on a property. Any view preservation ordinance would need to address situations where protected trees are involved.

Process

View preservation ordinances typically prescribe a succession of processes for resolving issues between parties, in a progression of increasing rigor if issues aren't resolved at earlier stages. While this overall approach is employed by both Tiburon and Rancho Palos Verdes, they differ in the role the city plays in the overall process. Tiburon relies on the parties to work privately, with the City ordinance providing a "basic right" to view (and access to sunlight), declaring unreasonable obstruction a nuisance, and prescribing the process for resolution of disputes which includes binding arbitration.[c] The Rancho Palos Verdes model also requires negotiation and mediation early in the process, which resolves approximately 90% of reported disputes. Instead of binding arbitration, cases that are not resolved through mediation would then proceed through a Planning Commission hearing process similar to other R-1 cases. Tiburon's model has the advantage of minimal demand on City resources, but it can be costly to the parties in terms of legal fees. The Rancho Palos Verdes model provides more public access and City control. The caseload in Rancho Palos Verdes has been growing over time because previous cases return as circumstances change (i.e growth of foliage).

[c] In addition to Tiburon, the City of Malibu, the City of Sausalito, and the Palos Verdes Homes Association also utilize the arbitration process.



The process suggested by the Board of the Trousdale Estates Homeowners Association comes closer to Tiburon's largely private model, but with somewhat greater City involvement in the notification procedures.

Next steps

At this time staff is requesting direction from the Planning Commission, specifically:

- The Commission may or may not desire to further pursue view preservation in the Trousdale Estates and Hillside Areas with respect to foliage.
- If the Commission wishes to further pursue such regulation, there may be other information the Planning Commission may wish staff to research and provide to the Commission.
- In addition to any information that staff provides to the Commission, a bus tour can provide the Planning Commission with the opportunity to personally observe the conditions to be addressed by view preservation and compare/contrast the Trousdale Area with the Hillside Area.
- After further direction from the Planning Commission, staff can draft a set of regulations for addressing view preservation. A uniform set of regulations could be developed for both the Hillside and Trousdale Estates Areas, of regulations could be more tailored to the conditions unique to each.

- An ordinance could proceed through the public hearing process during the Fall.

LARRY SAKURAI

Attachments:

- Proposal of the Trousdale Estates Homeowners Association Board of Directors
- Rancho Palos Verdes Guidelines and Procedures for Restoration of Views Where Foliage Is Involved (View Restoration Permits) and Preservation of Views Where Foliage Is Involved (Code Envorcement)
- Tiburon Ordinance Addressing View and Sunlight Obstruction from Trees

Letter from Charles and Andrew Flack
June 3, 2009

June 3, 2009

Planning Commission
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210

Commissioners,

First let me thank you for allowing me to make my presentation to you on May 28, 2009 prior to your scheduled bus tour. My brother Charles Flack and I have reviewed the four page View Preservation Proposal submitted to the Beverly Hills City Council on April 7, 2009 by The Trousdale Estate Homeowners Association (TEHA) Board of Directors as well as Mr. Larry Sakurai's, Principal Planner, Staff Report dated May 28, 2009.

Enclosed you will find excerpts of The Declaration Of Restrictions Of Trousdale Estates expired CC&R's to be used as examples and guidelines. Please note the sections highlighted in yellow.

We wish to make several comments regarding the View Preservation Proposals of the TEHA and the Staff Report dated May 28, 2009:

1. The Mediation/Binding Arbitration process is already provided by the City of Beverly Hills through the L.A. County Bar Association (as noted in our presentation dated May 28, 2009 - it was to "no avail"). The mediation process and possibly binding arbitration, to our understanding, is inadmissible in a civil action in court. We have been advised for this process to have any long standing value and be enforceable to us or future owners of said properties in question it must be recorded with the L.A. County Recorder as a Covenant attached to the property or properties. The other alternative is to have a City ordinance and or code to provide perpetuity. Also it is our understanding if there are no City ordinances or codes regarding view preservation civil action /litigation is highly likely to be unsuccessful.

2. POINTS TO CONSIDER REGARDING THE TEHA PROPOSAL AND THE STAFF REPORT. The following statements are made:

A. The TEHA states "No tree or landscaping should be above the height of the North(higher elevation) neighbors pad". "Appropriate landscaping plans for new construction. IE: height and type of plant and tree - the right plant in the right place".

B. The Staff Report states "Landscaping on new development should be reviewed for height(no higher than neighbor's pad) and appropriateness of plant material".

June 3, 2009

We take issue with the above quoted statements/proposals:

1. To use the height of the neighboring north pad as a height limitation is totally UNACCEPTABLE as the pad of the northern property EXCEEDS the fourteen foot (or higher) limitation of the southern structure's roof line below as delineated in Article 26. SINGLE - FAMILY RESIDENTIAL DEVELOPMENT STANDARDS FOR TROUSDALE ESTATES, Article 26.5 TROUSDALE R - 1 PERMIT. The result still being an obstruction of the northern property view. This proposal does not take into account the property line between the two properties of the south facing slope.

2. The above quoted statements do NOT INCLUDE REMODELS OR RELANDSCAPING and this should be included in any ordinance/code. Landscaping plans must be submitted to the appropriate commission/building and safety department for review and approval (with soil /geotech studies as needed) and permits issued.

Thank you for your consideration.

Andrew Flack

Andrew Flack

Charles Flack M.D.

Dr. Charles Flack

Cc: Nanette H. Cole
Lili Bosse
Daniel Yukelson
Noah D. Furie
Craig Corman

(b) No building, structure or improvement shall be constructed, erected, altered, placed or permitted to remain on any of said lots or any building site on said property in such location or manner as will unreasonably obstruct or interfere with the view from other lots in said tract or which exceeds fourteen feet (14') in height above the ground level of said lot or building site, except with the prior written consent and approval of the Architectural Committee; nor shall the grade or ground level or drainage of any lot or building site be materially altered or changed in any manner without the prior written consent and approval of the Architectural Committee.

(c) Outbuildings or garages erected and maintained upon any lot or building site shall conform generally in architectural design and exterior material to the finish of the dwelling houses to which they are appurtenant, and may be, but need not be, attached to said dwellings.

(d) No shed or tent or trailer or temporary buildings shall be erected, maintained or used on any lot or building site.

(e) No building shall be in any manner occupied while in the course of original construction or until it complies with all requirements as to area and all other conditions and restrictions applicable thereto. Construction of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until fully completed. No building constructed elsewhere shall be moved to or constructed on said property.

(f) None of the lots hereinabove described shall be divided, subdivided or resubdivided, nor shall any portion thereof be consolidated with any other parcel of land unless the resulting lot, parcel or building site shall contain at least one-half (1/2) acre in area measured to the center of any adjacent streets, alleys and ways, and no residential building or structure shall be constructed, erected, altered, placed or permitted to

remain upon any of said lots, parcels or building sites having a ground floor area, exclusive of open porches, outbuildings and garages, of less than twenty-five hundred (2,500) square feet.

IV.

No hedge or hedgerow or wall or fence or building or other structure shall be planted, erected, located or maintained upon any lot in such location or in such height as to unreasonably obstruct the view from any other lot or lots on said Tract.

V.

No sign or other advertising device of any character shall be erected or maintained upon any part of said property or on any lot or building site advertising the property for sale or rent; provided, however, that Declarants may erect and maintain on said property such signs and other advertising devices or structures as may be permitted by the ordinances of the City of Beverly Hills as they may deem necessary or proper in connection with the conduct of their operations for the development, improvement, subdivision and sale of said property.

VI.

No stable, poultry house or yard, or rabbit hutch or house, shall be constructed or maintained on any building site. No horses, cattle, cows, goats, sheep, rabbits, hares, game, game birds, or other animals, fowls, or poultry shall be kept, raised or permitted upon said property or any part thereof; except that domestic dogs, cats, birds and fish may be kept as household pets upon said property, provided that they are not kept, bred or raised thereon for commercial purposes or in unreasonable quantities.

VII.

(a) The owner of each lot of said tract shall keep said property free and clear of all weeds and rubbish and do all other things necessary or desirable to keep the premises neat and in good order, and it is hereby

operating public service wires, and conduits for lighting, heating, power, telephone and other methods of conducting and performing any public or quasi-public utility service or function as such easements and rights of way are shown and designated on the map of said real property recorded in the office of the County Recorder of Los Angeles County, California, and all of said easements and rights of way are reserved for the purposes herein and in said map set forth.

XI.

Declarants hereby expressly reserve the right to make any and all such cuts and fills on said property and on the lots and building sites included therein and to do such grading as in their judgment may be necessary to grade streets, lots and building sites designated or delineated upon any map of said property or any part thereof, and to do such works of improvement thereon as may be necessary to complete the subdivision, development and improvement of said property in accordance with such map or any part thereof until said subdivision and all improvements thereon shall have been accepted by the City of Beverly Hills.

XII.

(a) No building, structure, garage, outbuilding, fence, pole or other structure shall be constructed, erected, altered, remodeled, placed, maintained or be permitted to remain on said property or any portion thereof unless and until two complete sets of plans and specifications therefor prepared by a duly licensed architect or a draftsman approved by the Architectural Committee, including finished grading plans, drainage, plot plan showing the location of such structures on the building site, height, floor and roof plan, exterior elevations, sections and salient exterior details and color schemes, and landscaping and planting plans, including the type and location of trees, fences, hedges and walls, shall have been

features and intent of such building and improvements subject to the preparation, submission and approval of the building plans and specifications as provided in subparagraph (a) hereof.

(e) All plans and specifications for original construction or for the remodeling or any alteration affecting the exterior of any building shall be submitted in writing for approval over the signature of the owner of the lot or building site or over the signature of his duly authorized agent, together with the sum of $200.00 to be paid to the designated representative of the Architectural Committee as provided in subparagraph (c) hereof. One set of said plans shall be returned to the owner and one set shall be retained by the Architectural Committee.

(f) Said Architectural Committee or its designated representative shall have power and authority to approve or disapprove the plans and specifications and the approval of said plans, specifications and plot plans may be withheld not only because of the non-compliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by reason of the reasonable dissatisfaction of the Committee with the grading plan, drainage provisions, location of the structure on lot or building site, the finished ground elevation, the color scheme, finish, design, proportions, architecture, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon, the planting, landscaping, size, height or location of trees on the lot or building site, or because of its reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the Committee, which will unreasonably obstruct or interfere with the view from other lots in the tract, or which will render the proposed structure inharmonious or out of keeping with the general plan of improvement of the said property or with

of the lots and building sites in said real property with each other, both as to servient and dominant tenements as against all other lots in said tract.

(b) At any time, or from time to time, the owners of record of lots or building sites in said property then subject to this Declaration having an aggregate area equivalent to not less than 65% of the total area of all said property, and who shall include in their number the owners of record of not less than 75% of the building sites thereon or therein on which dwelling houses or other principal structures are then located, may modify, amend, cancel and annul, with respect to all or any of the covenants, conditions and restrictions contained in this Declaration and any supplement or amendment thereto by instrument in writing signed by said owners and acknowledged by them so as to entitle it to be recorded in the Office of the Recorder of Los Angeles County, California.

XIV.

(a) Violation or breach of any of the conditions, covenants, restrictions or reservations herein contained shall give the Declarants and/or any owner or owners of lots or building sites in said property, the right to enter upon said property upon or as to which such violation or breach exists, and to abate and remove at the expense of the owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of the covenants, conditions, restrictions and reservations, to prevent or enjoin them from so doing, to cause said violation to be remedied or to recover damages for the said violation.

(b) The result of every act or omission whereby any conditions, covenants, restrictions or reservations herein contained is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and

VIEW PRESERVATION PROPOSAL

TROUSDALE HOMEOWNERS ASSOCIATION
BOARD OF DIRECTORS

TOWARDS OBTAINING A VIEW PRESERVATION ORDINANCE FOR TROUSDALE

TROUDSALE WAS CONCEIVED AND CREATED FOR HOMES WITH A VIEW. WE WOULD LIKE THE CITY OF BEVERLY HILLS TO RECOGNIZE THIS FACT AND THAT HOMEOWNERS ARE ENTITLED TO A PROCESS, SUCH AS, A TROUSDALE PROTECTIVE ORDINANCE THAT WOULD RETURN TO OUR HOMEOWNERS, WHAT THEY WERE ORIGINALLY GIVEN, LOTS THAT HAVE UNRESTRICTED VIEWS.

A TREE, SHRUB, HEDGE OR OTHER VEGETATION SHALL NOT BLOCK OR BE PLANTED OR MAINTAINED IN SUCH A MANNER AS TO OBSTRUCT THE VIEW OF ANY OTHER TROUSDALE HOMEOWNER. THIS CONCEPT WAS INCLUDED IN THE ORIGINAL CC&RRS OF TROUSDALE, AND SHOULD BE THE MISSION STATEMENT OF THE NEW TROUSDALE VIEW PRESERVATION ORDINANCE

ALSO, AS A SECONDARY MEASURE, THE CONCEPT OF PROTECTION OF VIEW LOTS, SHOULD BE INCLUDED IN THE GENERAL PLAN.

SUGGESTED PROCESS:

1. INFORMAL NEGOTIATION – BETWEEN TWO HOMEOWNERS, NOTIFICATION BY MAIL AND PERSONAL MEETING TO RESOLVE ISSUE

2. MEDIATION – PROVIDE WRITTEN NOTICE ON CITY LETTERHEAD TO SUBMIT THE DISPUTE TO MEDIATION. 30 DAYS TO ACCEPT OR REJECT MEDIATION AND 21 DAYS TO AFFECT MEDIATION.

3. BINDING ARBITRATION – PROVIDE WRITTEN NOTICE ON CITY LETTERHEAD TO SUBMIT DISPUT TO BINDING ARBITRATION. 30 DAYS TO ACCEPT OR REJECT BINDING ARBITRATION AND 21 DAYS TO AFFECT BINDING ARBITRATION.

4. CIVIL ACTION IN COURT – TO BE BACKED BY LETTERS FROM CITY OF BEVERLY HILLS SHOWING THAT STEPS 1 THROUGH 3 HAVE BEEN CARRIED OUT.

COSTS OF PROCEDURES TO REGAIN VIEW.

BOTH PARTIES SHALL PAY 50% OF MEDIATION AND ARBITRATION FEES. IF POSSIBLE, THE CITY WILL OFFER FREE MEDIATION.

ALL RESTORATIVE ACTION COSTS AGREED ON SHALL BE BORNE 50% BY THE COMPLAINANT AND 50% BY THE OFFENDER, UNLESS OTHERWISE AGREED ON BY BOTH PARTIES

AFTER THE RESTORATIVE ACTION IS COMPLETED, ALL COSTS OF CONTINUING MAINTENANCE NECESSARY TO MAINTAIN THE RESTORED VIEW SHALL BE BORNE BY THE TREE OR LANDSCAPES OWNER.

POINTS TO CONSIDER FOR THE ORDINANCE:

NO TREE OR LANDSCAPPING SHOULD BE ABOVE THE HEIGHT OF THE NORTH (HIGHER ELEVATION) NEIGHBORS PAD.

APPROPRIATE LANDSCAPPING PLANS FOR NEW CONSTRUCTION. IE: HEIGHT AND TYPE OF PLANT AND TREE . – THE RIGHT PLANT IN THE RIGHT PLACE.

AS CITY TREES ARE ALSO A VIEW BLOCKING PROBLEM – AND GETTING WORST

POSSIBLE MEDIATION BY CITY STAFF ON INDIVIDUAL CITY TREES THAT SEVERLY BLOCK A HOMEOWNERS VIEW. TO BE TRIMMED BY CITY STAFF RATHER THAN WAITING FOR TRIMMING CYCLE PUT OUT TO BID.

PROVIDE THE TROUSDALE AREA WITH A MORE FREQUENT TRIMMING CYCLE

VIEW RESTORATION GUIDELINES & PROCEDURES

CITY OF RANCHO PALOS VERDES

CITY OF RANCHO PALOS VERDES

GUIDELINES AND PROCEDURES

FOR

RESTORATION OF VIEWS WHERE FOLIAGE IS INVOLVED (VIEW RESTORATION PERMITS) AND PRESERVATION OF VIEWS WHERE FOLIAGE IS INVOLVED (CODE ENFORCEMENT)

ADOPTED ON:
September 19, 2006

Planning, Building, and Code Enforcement

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ATTACHMENTS

Notice of Intent to File a View Restoration/View Preservation Permit Application Form

View Restoration/View Preservation Permit Application Form

View Restoration/View Preservation Permit Process Flowchart

View Restoration/View Preservation Appeal Process Flowchart

Map of Miraleste Recreation and Park District Boundaries

List of Streets within the Miraleste Homeowners' Association

RPV Development Code Section 17.02.040

Sample View Restoration Private Agreement

Documentation of Existing View Form

I. PURPOSE

A. The View Restoration Commission was created in accordance with Article 17 of Paragraph A of Section 2 of the Rancho Palos Verdes Council of Homeowners Association and the City of Rancho Palos Verdes City Council Cooperative View Preservation and Restoration Ordinance, which was passed by the voters of the City on November 7, 1989. The Ordinance has been codified into the City's Municipal Code as Section 17.02.040, View Preservation and Restoration.

B. The ballot measure, which was approved by the voters, states the purposes of the Ordinance as follows:

> **"The hillsides of the City constitute a limited natural resource in their scenic value to all residents of and visitors to the City. The hillsides provide potential vista points and view lots. The City's General Plan recognizes these natural resources and calls for their protection. The public health, safety and welfare of the City require prevention of needless destruction and impairment of these limited vista points and view lots. The purpose of this Ordinance is to promote the health, safety and general welfare of the public by accomplishing the purposes set forth below, and this Ordinance shall be administered in accordance with such purposes. Where this Ordinance is in conflict with other City ordinances, the stricter shall apply.**
>
> **Specifically, this Ordinance:**
>
> **1. Protects, enhances and perpetuates views available to property owners and visitors because of the unique topographical features of the Palos Verdes Peninsula. These views provide unique and irreplaceable assets to the City and its neighboring communities and provide for this and future generations examples of the unique physical surroundings which are characteristic of the City.**
>
> **2. Defines and protects finite visual resources by establishing limits which construction and plant growth can attain before encroaching onto a view.**
>
> **3. Insures that the development of each parcel of land or additions to residences or structures occur in a manner which is harmonious and maintains neighborhood compatibility and the character of contiguous sub-community development as defined in the General Plan.**
>
> **4. Requires the pruning of dense foliage or tree growth which alone, or in conjunction with construction, exceeds defined limits."**

Thus, the general purpose of the Ordinance is to promote the health, safety and general welfare of the residents of the City, by balancing the rights of the residential property owner with foliage against the rights of the residential property owner to have a view from a viewing area restored so that it can be enjoyed, when that view has been significantly impaired by foliage.

C. The Planning Commission accomplishes its purpose through a process of View Restoration Permit application, site inspection, public hearings and a decision on the application. The Commission's jurisdiction is limited to issues regarding view impairment caused by foliage, through the issuance of View Restoration Permits, and appeals of City Tree Review Permits and view preservation determinations.

D. View restoration requests involving trees located on City owned property, such as public parks, parkways and medians along public streets, are administered by City Staff through the issuance of a City Tree Review Permit issued pursuant to Section 17.76.100 of the Municipal Code. Staff decisions on City Tree Review Permits, and view preservation determinations are appealable to the Planning Commission. When reviewing Staff decisions regarding City Street Tree Review Permits, the Commission shall utilize the same process as is followed when the Commission reviews a View Restoration Permit application, excluding the early neighbor consultation process. Decisions of the Planning Commission on all view related permits are appealable to the City Council.

II. DEFINITIONS

A. Viewing Area

Section 17.02.040 (A)(15) of the Rancho Palos Verdes Municipal Code defines "viewing area" as follows:

"Viewing area" means that area of a structure (excluding bathrooms, hallways, garages or closets) or that area of a lot (excluding the setback areas) where the owner and City determine the best and most important view exists. In structures, the finished floor elevation of any viewing area must be at or above the existing grade adjacent to the exterior wall of the part of the building nearest to said viewing area."

B. View

Section 17.02.040 (A)(14) of the Rancho Palos Verdes Municipal Code defines "view" as follows:

"On the Palos Verdes Peninsula, it is quite common to have a near view and a far view because of the nature of many of the hills on the peninsula. Therefore, a 'view', which is protected by this section, is as follows:

a. A 'near view' which is defined as a scene located on the peninsula including, but not limited to, a valley, ravine, equestrian trail, pastoral environment or any natural setting; and/or

b. A 'far view' which is defined as a scene located off the peninsula including, but not limited to, the ocean, Los Angeles basin, city lights at night, harbor, Vincent Thomas Bridge, shoreline or off shore islands.

A 'View' which is protected by this Section shall not include vacant land that is developable under the city code, distant mountain areas not normally visible nor the sky, either above distant mountain areas or above the height of off shore islands. A 'View' may extend in any horizontal direction (360 degrees of horizontal arc) and shall be considered as a single view even if broken into segments by foliage, structures or other interference."

III. ESTABLISHING THE VIEWING AREA

A. Section 17.02.040 (B)(5) establishes the procedure for determining the "viewing area" as follows:

"The determination of a viewing area shall be made by balancing the nature of the view to be protected and the importance of the area of the structure or lot from where the view is taken. Once finally determined for a particular application, the viewing area may not be changed for any subsequent application. In the event the city and owner cannot agree on the viewing area, the decision of the city shall control. A property owner may appeal the determination of viewing area. In such event, the decision on the viewing area will be made by the body making the final decision on the application. A property owner may preserve his or her right to dispute the decision on viewing area for a subsequent application without disputing the decision on a pending application by filing a statement to that effect and indicating the viewing area the property owner believes to be more appropriate. The statement shall be filed with the city prior to consideration of the pending application by the City."

B. The "viewing area" of the applicant's property is where the best and most important view is taken. The determination of the "viewing area" is made "by balancing the nature of the view to be protected and the importance of the area of the structure or lot from where the view is taken".

1. On developed lots, the "viewing area" may be located on any level surface within the house (excluding bathrooms, closets, hallways or garages), which is at or above the existing grade adjacent to the exterior wall of the part of the building nearest to the "viewing area" or within the buildable area of the lot. A viewing area may be located on a patio, deck, balcony or lawn area which is adjacent to the primary

structure (generally within ten feet) and which is located on the same general grade on the lot as the primary structure, excluding the required setback areas and used as a gathering area. In determining the viewing area on a developed lot, greater weight generally will be given to locations within the primary structure where a view is taken than to locations outside of the primary structure where a view is taken, unless no view is taken from within the primary structure.

2. On properties where the applicant claims that he or she has a view from one or more locations either within or outside of the primary structure, it must be determined where the best and most important view is taken to determine the "viewing area" which is to be protected. The "viewing area" may only include multiple rooms or locations on the applicant's property if those locations share the same view.

3. The "viewing area" may only be located on a second (or higher) story of a structure if:

a. The construction of that portion of the structure did not require approval of a height variation permit or variance, pursuant to Chapter 17.02.040 of the Rancho Palos Verdes Municipal Code, or would not have required such a permit if that Section had been in effect at the time that portion of the structure was constructed; or

b. The viewing area is located in a part of the structure that constitutes the primary living area of the house, which is the living room, dining room, family room or kitchen. However, the viewing area may be located in the master bedroom, if a view is not taken from one of the rooms comprising the primary living area, and the master bedroom is located on the same story of the house as the primary living area.

4. In documenting the views, Staff usually will conduct the view analysis in a natural standing position. In those cases where the view is enjoyed from a seated position, Staff will verify if that is the case, and if so, will conduct the view analysis from the seated position in that area at a height of not less than three (3) feet, six (6) inches.

IV. APPLICATION PROCEDURES

A. Once an applicant completes the early neighbor consultation process described in Section V-A (Mandatory Findings) of these Guidelines and the view problem is not resolved and the applicant wishes to proceed, the applicant(s) may complete and submit a View Restoration Permit application form (see attached form) to the City's Department of Planning, Building and Code Enforcement, accompanied by the appropriate filing fees, in order to initiate a formal request for a View Restoration Permit.

B. It should be noted that the fees required for a View Restoration Permit are established by the City Council by resolution.

C. The following fee structure pertains to View Restoration Permits only and is designed so that the applicant pays two separate flat fees as follows:

1. The first fee is a fixed amount that is paid by an applicant to cover the City's costs associated with processing steps, such as reviewing the application for completeness, conducting the initial site visit and processing a formal application from submittal through a Planning Commission decision. Specifically, said fees would cover the costs of reviewing an application for completeness, conducting site visits, attending the public hearing(s) and preparing the Staff Report(s) and Resolution(s).

2. The second fee or follow-up fee is a fixed amount established by City Council resolution that would be paid by an applicant if an application is approved by the Planning Commission. Specifically, this fee would cover the review of the trimming/removal bids, the monitoring of the work, and the documentation of the restored view.

3. The establishment of a trust deposit account by an applicant to cover the cost of the actual foliage trimming/removal, as described in Section VI-K (Commission Action) is separate from the two processing fees described herein.

D. Once a formal View Restoration Permit application has been submitted, the City will review the application to determine if the information is complete, before beginning processing the application. If any information is missing or components of the application are incomplete, the applicant will be notified of any deficiencies in writing, and the application will be held in abeyance until the necessary materials are received by the City. If an applicant does not submit the necessary information and the application remains incomplete for six (6) months, the City shall administratively withdraw the application.

E. Once the application is deemed complete, the following sequence of steps shall occur in order to process an application for a View Restoration Permit (also see attached flow chart):

1. Staff notifies the foliage owner(s), in writing, that a formal request for view restoration has been filed with the City, attaching a copy of the application.

2. Staff schedules and conducts site visit(s) to the applicant's and foliage owner's properties. During the first site visit to the foliage owner's property, Staff will inquire as to whether the foliage owner wishes to have the Commission members visit their property. A foliage owner may request Commissioners visit his/her property in order to fully assess the case or demonstrate unique site conditions, such as special landscaping, slope stability or privacy concerns. Requests for the Commission to visit a foliage owner's property must be made in writing by the foliage owner and will be honored by the Commission.

3. Staff prepares a Staff Report to the Planning Commission, which will include the following:

a. Application form;

b. Early Neighbor Consultation documentation;

c. An analysis of the six mandatory findings as set forth in Section 17.02.040(C)(2)(c) of the City's Municipal Code;

d. Recommendation(s) on the disposition of the application;

e. Determination if any of the Commission members are ineligible to participate on the application, based on a conflict of interest due to the proximity of a Commissioner's properties to the property that is the subject of the application. If a Commissioner owns property that is located within 500 feet of the subject property, a conflict is presumed;

f. A tentative site visitation schedule for Commission members.

4. Staff establishes a date for the public hearing on the application and provides written notice of the hearing to the applicant(s) and the foliage owner(s) a minimum of 30 days prior to the hearing date. Notice of the hearing date shall also be published in a newspaper of general circulation in the City or clearly posted on each applicant's property.

5. Staff distributes the staff report to members of the Planning Commission a minimum of two weeks prior to the actual hearing date, and the Commissioners visit the site(s).

a. Commissioners are required to visit the applicant's property. Eligibility to participate in the decision on a View Restoration Permit application is dependant on the Commissioner visiting the applicant's site(s) prior to the public hearing. If an applicant refuses access to his or her site, the request for a View Restoration Permit will be denied.

b. Commissioners will visit the foliage owner's property if requested to do so by the foliage owner(s), in writing. Even if no request is made, Commissioners frequently will attempt to visit a foliage owner's property unless the foliage owner denies a Commissioner access. Although a foliage owner has discretion as to whether to allow Commissioners into his/ her property, by not allowing site visits of their property, it may be more difficult for Commissioners to evaluate issues raised by the foliage owner when considering an application.

c. Commissioners are responsible for arranging visits to the site(s). However, no more than three (3) Commissioners may visit the site at the same time.

6. The Planning Commission conducts a public hearing pursuant to the Commission's adopted Administrative Procedures. The Chairperson's instructions to the audience will generally follow these guidelines:

a. Any person desiring to speak must first be recognized by the Chairperson.

b. All participants must speak from the podium.

c. All speakers must first state their full names and addresses, and the names of any persons in whose behalf they are appearing (if any).

d. All comments must be made clearly and audibly.

e. Repetition of comments should be avoided, and speakers will be discouraged from reading a submission which has been copied and distributed to the Commission or is contained in the agenda packet.

f. Normally, the applicant(s) and foliage owner(s) will be limited to a five (5) minute presentation and a three (3) minute rebuttal (if requested). All other persons will be generally limited to a three (3) minute presentation each.

g. Except when necessary for immediate clarification of a particular point, no person shall be allowed to speak a second time until all others wishing to speak have had an opportunity to do so, and then only at the direction of the Chairperson.

h. Due to unusual complexity of the case, submission of expert testimony or a large number of speakers on a particular case, the Chairperson, at his or her discretion, may allocate more than five (5) minutes per side and allow those wishing to speak on each side to designate a spokesperson or to divide the allotted time among themselves.

7. After the public hearing is closed and the Commission has reached a decision on the application, a resolution reflecting the Commission's decision shall be adopted by the Commission. The resolution shall be drafted by Staff and, where appropriate, reviewed by the City Attorney. If necessary, at a subsequent meeting, the resolution may be placed on the Commission's Consent Calendar for final action. Adoption of the resolution shall result in the issuance of a View Restoration Permit or denial of the request.

F. Foliage not Specifically Designated

Conditions of approval of View Restoration and Preservation Permit Applications specify individual trees or plants to be trimmed or removed. However, view-impairing foliage

often grows in clusters or is screened by foliage in the foreground so that individual plants are not readily discernible. Therefore, foliage which is located on the same property and is in the view that was analyzed by Staff but was not specifically designated in the view analysis because it was behind other foliage which was specifically designated in the view analysis and was trimmed pursuant to the decision and the conditions of approval, shall be trimmed to the same height that was established by the Commission, for the designated foliage and the applicant shall pay the additional expense of having the foliage trimmed.

G. Once the work is performed, Staff will document the applicant's view with photographs taken from the applicant's viewing area with a standard camera lens that will not alter the actual image that is being documented from the viewing area. The photographs will be kept on file with the City and copies shall be given to all involved parties to maintain the foliage in accordance with the City's final decision.

V. MANDATORY FINDINGS

Section 17.02.040(C)(2)(c) of the Municipal Code requires that, in order for a View Restoration notice to be issued, the Planning Commission must make the following six mandatory findings:

A. "The applicant has complied with the early neighbor consultation process and has shown proof of cooperation on his/her part to resolve conflicts."

1. Each applicant must provide evidence of early neighbor consultation with each foliage owner, utilizing the process described below.

2. Evidence of adequate early neighbor consultation shall consist of each applicant filing a "Notice of Intent to File a View Restoration Permit Application" with the City prior to the submittal of a formal View Restoration Permit Application. Said notice shall be on a form provided by the City and shall be signed by the owner of the applicant's property. Each applicant shall indicate, by marking the appropriate box on the "Notice of Intent to File a View Restoration Permit Application" that the applicant has made an attempt to contact the foliage owner prior to submittal and shall submit written proof of that attempt in the form of a copy of a registered letter and the return receipt. The notice shall include a signed statement from the applicant agreeing to meet with City representatives and each foliage owner that will be named in the pending application, to attempt to resolve any issues between the parties. The notice also shall indicate at least three days and times when the applicant is available to attend the pre-application meeting (see attached flowchart).

3. Upon receipt of a signed and complete Notice from an applicant, the Director of Planning, Building and Code Enforcement shall provide written notification to each foliage owner listed in the Notice, via certified mail, of the pending application. The City's notification letter shall also request that the foliage owner attend one pre-application meeting at City Hall to discuss the City's view restoration process with City

representatives and the applicant(s). The notification letter to each foliage owner shall contain three possible meeting times (date and time) identified by the City from which the foliage owner may select. The determination of the three meetings shall be based on the applicants' and City representatives' availability. The notification letter shall require that the foliage owner respond back to the City in writing, within 10 working days of the City's certified mailing of the notification, with one selected date.

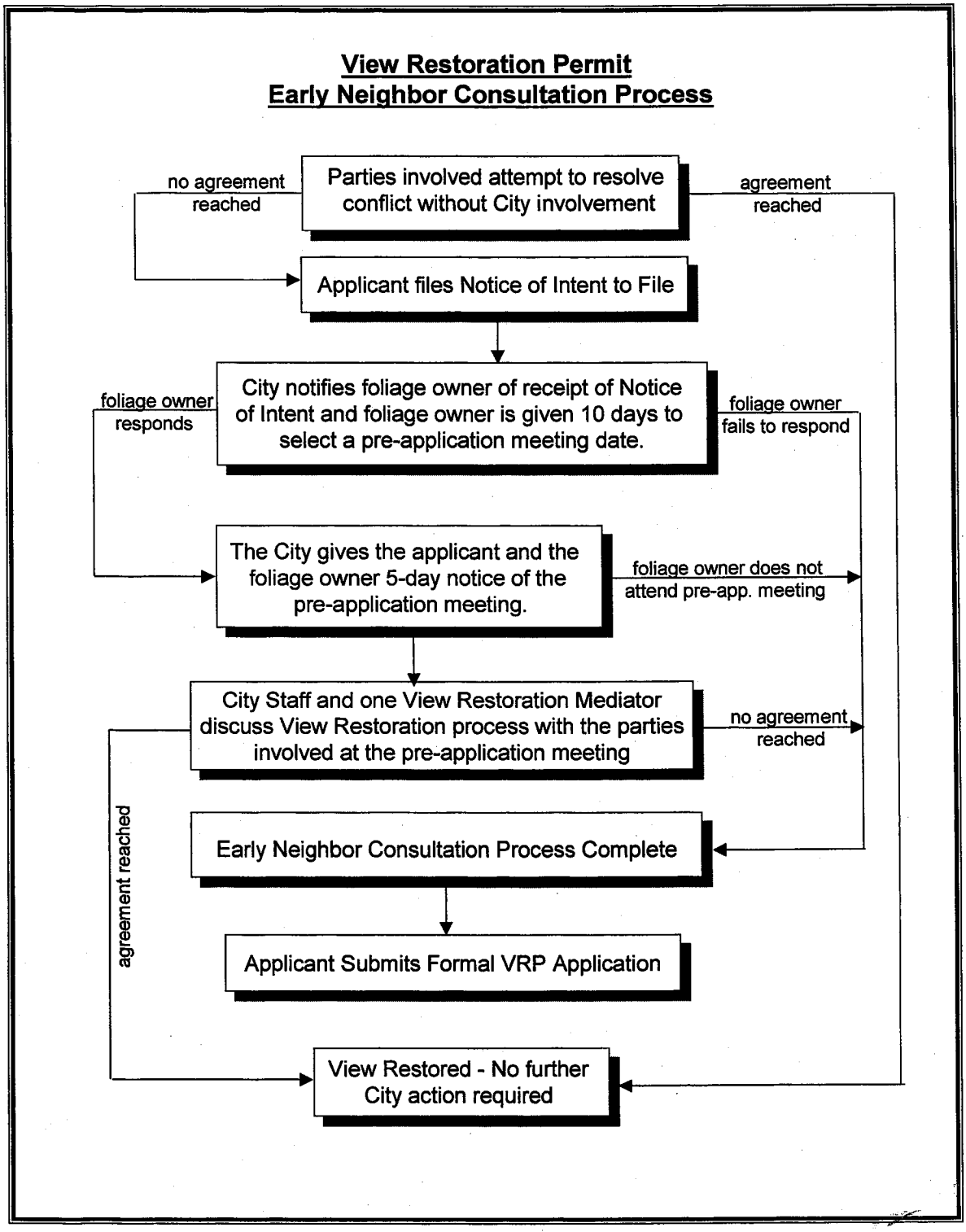
4. If any foliage owner responds in writing with a date selection within the specified time frame, the Director of Planning, Building and Code Enforcement shall arrange a pre-application meeting at City Hall between the applicants, the foliage owners and City representatives. Notice of the meeting shall be provided by the City to all parties, at least 5 working days prior to the meeting date.

The purpose of the pre-application meeting is to discuss the City's view restoration process with the affected parties and attempt to resolve the issues in order to avoid the filing of a formal application.

5. The initial pre-application meeting arranged by the City shall occur no later than 60 calendar days from the date that a "Notice of Intent to File a View Restoration Permit Application" is filed by an applicant with the City. Additional pre-application meetings with the City shall occur only if there is written consent from every applicant and foliage owner. This does not preclude foliage owners and applicants from meeting on their own with no City participation. If the applicant requests more than one meeting within a 12-month period, then the City shall charge the applicant a mediation fee (as established by City Council resolution) for each additional meeting, and the applicant shall pay the fee to the City prior to the scheduling of any additional mediation meetings.

6. The City shall be represented at the pre-application meeting by the Director of Planning, Building and Code Enforcement or his/her designee. In addition, a view restoration mediator shall attend the pre-application meeting. Mediators who reside within 500 feet of the applicant or foliage owner properties are ineligible to participate in the pre-application meeting.

7. Once an applicant submits a "Notice of Intent to File a View Restoration Permit Application" and the City provides notification to a foliage owner of


View Restoration Permit
Early Neighbor Consultation Process
Parties involved attempt to resolve conflict without City involvement
no agreement reached
agreement reached
Applicant files Notice of Intent to File
City notifies foliage owner of receipt of Notice of Intent and foliage owner is given 10 days to select a pre-application meeting date.
foliage owner responds
foliage owner fails to respond
The City gives the applicant and the foliage owner 5-day notice of the pre-application meeting.
foliage owner does not attend pre-app. meeting
City Staff and one View Restoration Mediator discuss View Restoration process with the parties involved at the pre-application meeting
no agreement reached
agreement reached
Early Neighbor Consultation Process Complete
Applicant Submits Formal VRP Application
View Restored - No further City action required

the pending application and requests their attendance at a pre-application meeting, the early neighbor consultation process shall be deemed to be terminated and the applicant(s) may immediately file a formal View Restoration Permit Application with the City if any of the following occurs:

a. A foliage owner fails to respond in writing with a date selection within the time frame specified in the City's notification letter;

b. A foliage owner notifies the City in writing that he/she does not wish to attend the pre-application meeting;

c. A foliage owner fails to attend the arranged pre-application meeting; or

d. Unless waived in writing by every applicant for a particular application, sixty (60) calendar days have elapsed from the date that a complete "Notice of Intent to File a View Restoration Permit Application" was submitted to the City by the applicant(s).

8. If an agreement is reached between the parties as a result of the pre-application meeting, Staff and/or the Mediator will encourage the participants to prepare and will assist in the preparation of the private agreement for the parties to sign (see attached sample).

9. At the public hearing, the applicant may be asked to explain his/her specific efforts to comply with the ordinance requirement for attempting to resolve conflict.

B. "Foliage exceeding sixteen (16) feet or the ridge line of the primary structure, whichever is lower, significantly impairs a view from the applicant's viewing area, whether such foliage is located totally on one property, or when combined with foliage located on more than one property."

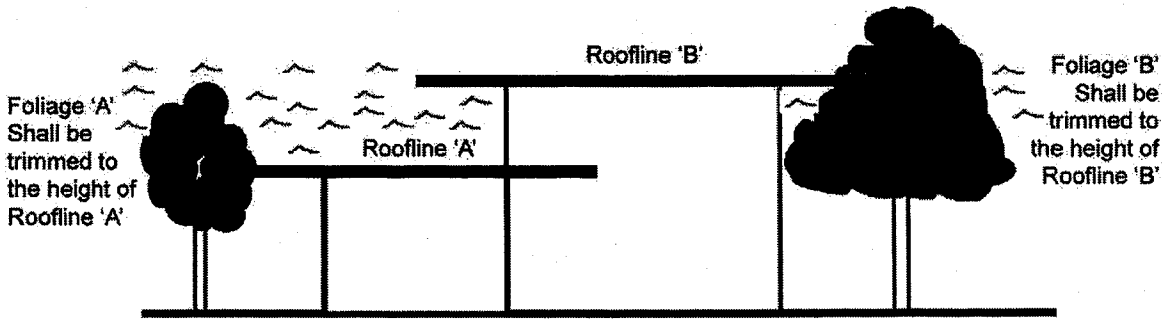
1. After the location of the "viewing area" on the applicant's property is determined, the Commission must find whether foliage, which exceeds the lower of sixteen feet or the ridge line of the primary structure, significantly impairs a view from the "viewing area".

2. To determine which of the two measurements referenced in the paragraph above is the lowest, the sixteen (16) foot height measurement shall be measured from the base of the plant or tree (where it emerges from the ground).

3. For structures with multiple roofline heights that would block the view if the foliage were not present, foliage on the property, shall be lowered to the roofline of that portion of the structure that otherwise would block the view, as illustrated below in Figure 1. Where a structure with multiple roofline heights does not otherwise block a

view, foliage on the property shall be trimmed to the applicable height limit set forth in this paragraph "B".

Figure 1



Multiple Roofline Structure with Foliage
(Example: Ocean view from the applicant's viewing area)

4. Section 17.76.030 of the City's Development Code limits the height of hedges. A "hedge" is defined by the Code as "shrubbery or trees planted and maintained in such a manner as to create a physical barrier." A hedge can be included in a View Restoration Permit application, if the top of the hedge exceeds sixteen feet,, the Planning Commission may require a hedge to be trimmed to the lesser of sixteen (16) feet or the ridgeline of the primary structure, if necessary to restore the view. However, if the top of the hedge is below sixteen feet or the ridgeline of the primary structure, whichever measurement is lower, these cases shall be referred to the City's Code Enforcement Division for resolution. Foliage which is determined by the Los Angeles County Fire Department to be a fire hazard also shall be referred to the City's Code Enforcement Division for immediate resolution.

5. The Planning Commission may, at its discretion, require the review of any case by a qualified soils engineer, landscape architect, arborist or other appropriate professional. The Staff shall be responsible for obtaining qualified consultants to review and comment on the specific cases requested by the Commission. In cases where expert advice is sought by the City, the applicant(s) shall be responsible for bearing those costs. Staff will advise the applicant of the estimated additional expense for the expert advice. If the applicant refuses to pay for that expense and does not augment the trust deposit to cover that expense, then the application will be administratively withdrawn by City Staff. If the applicant agrees to pay for the expert advice, and the advice is provided to the Commission, the Commission, again at its discretion, may abide by, or reject, the advice of the consultant(s). Commission decisions must be supported by substantial evidence in the record before the Commission.

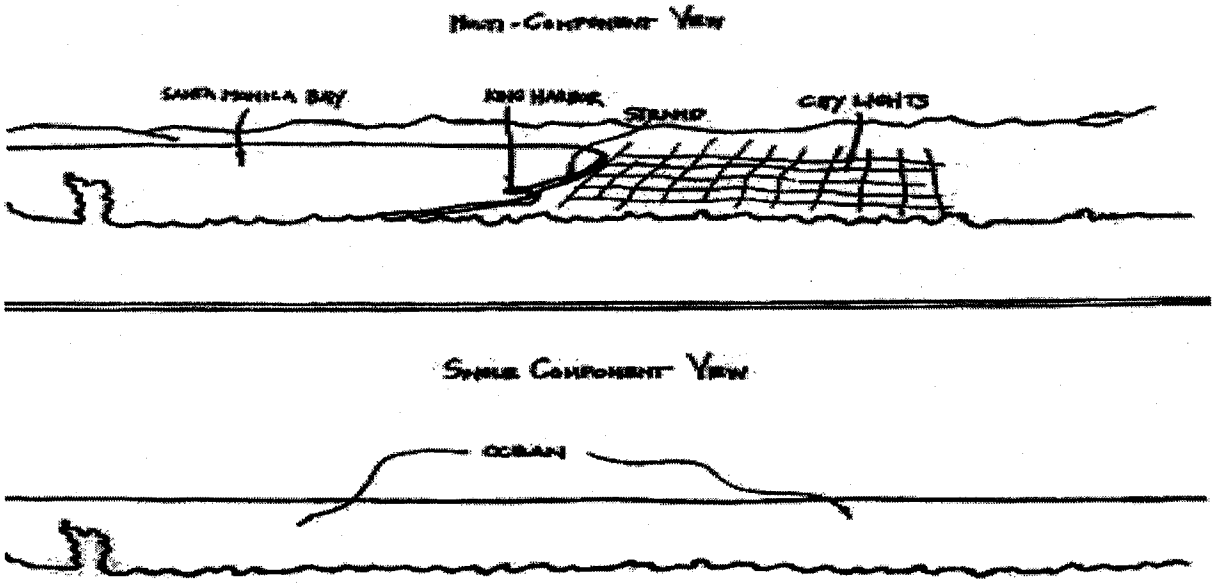
6. The Commission shall only take action on foliage which significantly impairs a view from the applicant's viewing area. Foliage which does not significantly

impair a view may remain in the applicant's view frame. The following criteria may be used to help determine whether a view is being "significantly" impaired by foliage:

a. Foliage Position Within the View Frame. Foliage that is located in the center of a view frame is more likely to be found to create a significant view impairment than foliage located on the outer edge of a view frame.

b. Single-component View vs. Multi-component View. Some view frames contain a combination of different view components, such as a view of the ocean, harbor and City lights (multi-component view); while some view frames consist entirely of one component, such as only a view of the ocean (single-component view). Foliage that entirely obscures one of the components of a "multi-component" view is more likely to be found to create a significant view impairment than foliage that impairs the same degree of view of a "single-component" view (see diagram below).

c. Prominent Landmarks. Greater weight should be given to prominent landmarks or other significant features in the view frame such as the Vincent Thomas Bridge, harbor, shoreline, distant mountain areas, city skylines, and Channel Islands. As a result, foliage which impairs a view of any of these landmarks is more likely to be found to create a significant view impairment.



C. **"The foliage to be removed is located on property, any part of which is less than one thousand (1,000) feet from the applicant's property line."**

Staff from the Department of Planning, Building and Code Enforcement will determine the distance from the applicant's property line to the nearest property line of the site containing the foliage under consideration.

D. **"The foliage significantly impairing the view did not exist as view impairing vegetation when the lot from which the view is taken was created."**

1. Where the applicant's property and the property containing the foliage in question, are both located in the same subdivision or in adjacent subdivisions, Staff will determine the date at which the lots were created.

2. In other cases, the following sources of information may be used to determine the time when the foliage under consideration began to impair the view:

a. Aerial photographs maintained by the City.

b. Other photographs taken on known dates indicating the presence of vegetation or lack of vegetation.

c. Property descriptions prepared in connection with the sale of property (e.g. multiple listing information, newspaper advertisements, real estate flyers, etc.).

d. Testimony of witnesses.

e. Any reports documenting land conditions or site surveys that include information about vegetation.

E. **"Removal or trimming of the foliage will not cause an unreasonable infringement of the privacy of the occupants of the property upon which the foliage is located."**

1. The burden of proving an "unreasonable infringement of indoor and/or outdoor privacy" shall be on the foliage owner. The Commission will make a determination on a case-by-case basis.

2. Given the variety and number of options which are available to preserve indoor privacy, greater weight generally will be given to protecting outdoor privacy than to protecting indoor privacy.

F. **"For property located within the boundaries of the Miraleste Recreation and Parks District, the Commission shall also find that removal or trimming of**

foliage strikes a reasonable balance between meeting the purposes of Section 17.02.040 set forth in Section 1 of the Ordinance approved by the voters on November 7, 1989, and preserving the historical development of the Miraleste Recreation and Parks District with large numbers of trees."

1. The Miraleste Recreation and Parks District has adopted a procedure for responding to view restoration and maintenance requests for foliage located on its property. Such properties owned by the District are not subject to the City's View Restoration Permit process.

2. Properties located within the boundaries of the District, but owned by a person or entity other than the District, are subject to the View Restoration Permit process and the additional finding above.

3. A map of the boundaries of the Miraleste Recreation and Parks District and a list of the streets within the Miraleste Homeowners' Association are attached.

VI. COMMISSION ACTION

A. If the Commission is able to make all of the mandatory findings set forth in Section V (Mandatory Findings) above, then the Commission must determine the action(s) which must be taken to restore the view. Such action(s) may include culling, lacing, trimming, or removal of the foliage, which is significantly impairing the view from the viewing area. These terms are defined as follows:

1. Culling shall mean the removal of dead, decayed, or weak limbs or foliage from a tree or shrub.

2. Lacing shall mean a comprehensive method of pruning that systematically removes excess foliage from a tree or shrub, but maintains its shape.

3. Trimming shall mean the removal of limbs or foliage from a tree or shrub. Trimming includes, but is not limited to:

a. "Crown reducing", which is a comprehensive method of pruning that reduces a tree's or shrub's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of the leaders or the longest portion of limbs to a lateral branch large enough to assume the terminal; and,

b. "Crown raising", which is a comprehensive method of pruning that removes limbs and foliage from the lower part of a tree or shrub in order to raise the canopy of the tree or shrub over the view.

c. "Topping", which is the cutting of branches and/or trunk of a tree or shrub in a manner which substantially reduces the overall height of the tree or shrub.

4. Removal shall mean the removal and disposal of a tree or shrub, by grinding the shrub's or tree's stump to the existing grade or a depth below existing grade to be determined by the Planning Commission on a case-by-case basis. If existing topography or other physical limitations identified by the tree service contractor preclude mechanical stump grinding, the stump shall be flush cut to existing grade or as close to existing grade as possible, as determined by the tree service contractor. If a foliage owner wishes to keep the stump, he or she may so elect; then, in no case, may the remaining stump height exceed 18 inches above grade. Unless otherwise directed by the Commission in connection with the decision on a particular application, removal of the foliage shall not include the removal and disposal of a plant's root system.

B. If any tree or shrub that is ordered to be culled, laced, or trimmed dies within one year of the initial work being performed due to the performance of the work, the applicant or any subsequent owner of the applicant's property shall be responsible for providing a replacement tree or shrub to the foliage owner. This time period may be extended by the Commission if evidence is provided by a certified arborist that a longer monitoring period is necessary for a specific type of tree or shrub. However, if the city arborist determines that culling, lacing, or trimming said tree or shrub will in all probability cause the tree or shrub to die, and the foliage owner chooses not to accept removal and replacement as an option, either in writing or in public testimony during the public hearing, then the applicant will not be responsible for providing a replacement tree or shrub to the foliage owner. The replacement foliage shall be provided in accordance with the specifications described in section VI-E (Commission Action) of these Guidelines. If the work is performed by the foliage owner, said foliage owner shall forfeit the right to replacement foliage if the trimmed tree dies. If a tree or shrub dies it is subject to removal pursuant to Section 8.24.060 (property maintenance) of the RPV Municipal Code.

C. Complete removal of any remaining portion of the tree or shrub that does not significantly impair the view will only be ordered if the owner of the property where the foliage is located consents to the complete removal of the remaining tree or shrub and the Commission finds:

1. That upon the advice of the City's arborist, culling, lacing, or trimming the foliage to sixteen (16) feet or the ridge line is likely to kill the tree or shrub or threaten the public health, safety and welfare; or

2. That upon the advice of the City's arborist, culling, lacing, or trimming the foliage to sixteen (16) feet or the ridgeline will destroy the aesthetic value of the foliage that is to be trimmed, laced or reduced in height.

D. In order to balance trimming, the commission may require trimming portions of a tree or shrub that are below 16 feet or the ridgeline provided the foliage owner agrees. If a foliage owner agrees to such trimming, then he must do so either in writing, within 30 days of final approval of a View Restoration or View Preservation Permit or in public testimony taken during the hearing. If the foliage owner does not

agree, then the foliage owner will not be required to trim, lace or prune below that level and the applicant will not be required to pay for the additional work.

E. The Commission also may order the applicant to replace trees or shrubs which have been removed if the owner of the property where the foliage is located consents to the replacement of the tree or shrub and the Commission finds:

1. That removal without replacement foliage will cause a significant adverse impact on:

a. The public health, safety and welfare;

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help stabilize a slope or minimize slope erosion.

b. The privacy of the owner of the property where the foliage is located;

An example of this would be a situation where there is evidence before the Commission that replacement foliage to mitigate the loss of privacy provided by pre-existing foliage is needed to help screen or block views from the applicant's property into the foliage owner's usable yard area (deck, patio, pool/spa area, barbecue area) and/or residence (unless interior privacy can be achieved by other means).

c. Shade provided to the dwelling or the property where the foliage is located;

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help provide shade to an area of the foliage owner's property, such as a usable yard area (deck, patio, pool/spa area, barbecue area) or residence, that is receiving shade from the foliage that is to be removed.

d. The energy-efficiency of the dwelling where the foliage is located;

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help cool an area of the foliage owner's residence in the summer months, that is being kept cool by foliage that is to be removed.

e. The health or viability of the remaining landscaping where the foliage is located; or

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help provide shade to existing sun-sensitive landscaping on the foliage owner's property, that is receiving shade from the foliage that is to be removed.

f. The integrity of the landscaping of the property on which the foliage is located.

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to replace foliage that is a focal point or integral element of an existing landscaping plan.

g. The function of the landscaping as screening of an unfinished wall or structural elements of a deck or other similar structure on an adjacent property.

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to replace foliage that provides effective screening of unsightly feature(s) located on an adjacent upslope property. Such features may include but are not limited to unfinished walls, or the support elements underneath decks and structures.

F. The Commission shall ensure that replacement foliage is reasonably comparable to the foliage removed in terms of function and/or aesthetics while understanding that the replacement foliage will not be of the same size and breadth as the pre-existing mature foliage. For example, if replacement foliage is determined to be necessary to replace foliage located on a slope, the replacement foliage should be of a woody-root species variety that provides soil stability. The selection of the type of replacement foliage shall be made by the foliage owner from an approved list of foliage types provided by the Director of Planning, Building and Code Enforcement or approved by the City arborist.

G. The Commission is not obligated to order replacement of every tree or shrub ordered removed with a new tree or shrub. For example, two new replacement trees may be able to provide the same level of privacy as five pre-existing trees that are ordered removed. Replacement trees or shrubs generally should be of a 15-gallon size, and should not be larger than a 24-inch box size, unless warranted by the need to reasonably protect privacy or exceptional circumstances and the tree or shrub that is being replaced is substantially larger than a 24-inch box size.

H. The Commission may require that a long-term foliage maintenance schedule be incorporated into the conditions of approval of an approved View Restoration Permit. The purpose of the maintenance schedule is to dictate the minimum frequency of future trimming (i.e. semi-annual, annual or biennial) based on the growth rates of the subject foliage so as to not significantly impair a view. Alternatively, the Commission may specify the amount of allowable growth as measured with respect to a fixed point of reference that will not significantly encroach into the view, and require that when this point is reached, the foliage owner may be required to trim the foliage back to the height established by the Commission. In establishing the maintenance schedule, the Commission may take into account seasonal dormant periods of the subject foliage, when trimming is least harmful to the foliage.

I. The Commission shall require that a property owner trim or remove foliage within ninety (90) days. If no date is specified by the Commission, the ninety day time frame shall commence upon the receipt of a letter from the City notifying the foliage owner to trim/remove the foliage. Such a letter is sent by the City once a trust account has been established by the applicant for the cost of the trimming/removal. Within the ninety (90) day time frame, but not less than two weeks before the trimming/removal date, the foliage owner shall inform City Staff of the date and approximate time the work is scheduled to occur, so that staff may be available on-site to ensure the work is performed in accordance with the Commission's decision. Staff strongly encourages that the foliage owner to schedule a date during the Monday thru Friday workweek. Staff's on-site monitoring of the tree trimming/removal work shall include, if necessary, directing the foliage owner to trim additional foliage that was not specifically designated by the Planning Commission but found by staff to be significantly impairing the same view after the specified foliage is trimmed, provided the Planning Commission had imposed such a condition in its decision. Said additional foliage shall be trimmed to the same height that was established by the Commission for the designated foliage and the applicant shall pay the additional expense of having the foliage trimmed. If evidence is provided to the Commission that it is less harmful to trim certain foliage during the foliage's dormant period, the Commission may require that the subject foliage be trimmed ninety (90) days from an established date. In situations where foliage is dormant during the winter months, the Commission shall require that the trimming be performed during the months of November through March. In situations where the Commission determines that not all of the foliage on a property needs to be trimmed during a specific time of the year, the Commission may take either of the following actions:

1. Establish a specified time period for trimming the time-sensitive foliage and establish a different time period for trimming the remaining foliage. This will require the foliage owner to perform two separate trimming actions.

2. Establish a specified time period for trimming the time-sensitive foliage and require that the remaining foliage also be trimmed at that time.

J. Unless the Commission specifies the amount of allowable growth pursuant to subsection VI-H the Commission may require that all maintenance schedules incorporated into the conditions of approval of a View Restoration Permit be reviewed at a future date to allow the Commission an opportunity to assess the adequacy of the maintenance schedule, as well as the foliage owner's ability to maintain the foliage in compliance with the conditions of approval. The review date shall occur a minimum of one year after the initial trimming is performed. The specific date shall be set by the Commission at the time it makes its decision on a View Restoration Permit, and shall be based on the growth rates of the subject foliage, as well as any other factors that the Commission finds are pertinent to the decision. On or about the specified review date, City Staff will inspect the foliage sites and transmit a brief report to the Commission which describes whether the foliage is being maintained in accordance with the conditions of approval. The report shall also contain a recommendation from City Staff

as to whether the maintenance schedule should be amended. The Commission shall consider the report and determine if a public hearing to amend the conditions of approval is necessary. If a public hearing is determined to be necessary, Staff shall transmit to the Commission a report with recommendations for additional or modified conditions of approval. Notice of the public hearing shall be provided in the same manner as required by Municipal Code Section 17.02.040 for the original public hearing. The Commission decision on the review hearing is appealable to the City Council pursuant to Municipal Code Section 17.02.040.

The Commission shall require that an applicant submit one (1) to three (3) itemized estimates to the City for carrying out the work required by an approved View Restoration Permit. Said estimates shall be submitted within thirty (30) days after the adoption of the Resolution and shall include the cost to have an ISA certified tree trimmer or accredited arborist on site to perform or supervise the work being done. Said estimates are to be supplied by licensed landscape or licensed tree service contractors, acceptable to the City, which provide insurance by insurers in a form acceptable to the City, and shall include all costs of cleanup and removal of debris. Said insurance shall identify the property owner and the City (and its officers, agents and employees) as additionally named insureds, and shall have a coverage amount of no less than $1,000,000 for each occurrence and no less than $2,000,000 in the aggregate. In addition, the applicant shall pay to the City an amount equal to the lowest of the estimates and such funds shall be maintained by the City, in a City trust account until completion of the work as verified by City Staff.

Upon completion of the work, the foliage owner shall submit a copy of a paid invoice to the City. Within 10 calendar days of the submittal of the invoice and verification by City Staff of compliance, the City shall authorize the transmittal of funds from the City trust account to the foliage owner. A reimbursement check to the foliage owner shall be released by the City no later than 30 days following Staff's authorization. If the paid invoice submitted by the foliage owner is for an amount less than the funds in the City's trust account, the foliage owner shall only be transmitted an amount equal to the actual cost of the trimming. In such situations, the balance of the trust account shall be refunded to the applicant (within 30 days of receipt of the appropriate billing) or applied to the applicant's permit processing account, if that account contains a negative balance. If the paid invoice submitted by the foliage owner is for an amount that exceeds the funds in the City's trust account, the foliage owner shall only receive the funds from the City trust account and the foliage owner shall be responsible for paying the difference. If a foliage owner chooses to do the required work himself/herself, the foliage owner shall not be compensated from the City trust account and the amount in the trust account shall be refunded to the applicant(s).

If the required work as specified herein is not completed, as verified by Staff, within the stipulated time periods, then the City of Rancho Palos Verdes will utilize the City's code enforcement process to authorize a bonded tree service to perform the work at the subject property at the foliage owner's expense, and the applicant's deposit will be refunded. In the event that the City is required to perform the work, the foliage

owner will be billed for all City expenses incurred in enforcing the View Restoration order. If the foliage owner does not pay the invoice, a lien or assessment may be recorded against the foliage owner's property, pursuant to Title 8, Chapter 24 of the Rancho Palos Verdes Municipal Code.

VII. APPEAL OF COMMISSION DECISION

A. A decision of the Commission on a view related permit is appealable to the City Council. After considering the written and oral testimony at the appeal hearing, the City Council may take one of the following actions:

1. Affirm the decision of the Planning Commission and approve the application upon finding that all applicable findings have been correctly made and all provisions of Section 17.02.040(C)(2) of the Municipal Code have been complied with; or

2. Approve the application but impose additional or different conditions as the City Council deems necessary to fulfill the purposes of Section 17.02.040(C)(2); or

3. Disapprove the application upon finding that all applicable findings cannot be made or all provisions of Section 17.02.040(C)(2) have not been complied with; or

4. Refer the matter back to the Planning Commission to conduct further proceedings. The remanded proceedings may include the presentation of significant new evidence which was raised in conjunction with the appeal. The City Council shall state the ground(s) for the remand and shall give instructions to Planning Commission concerning any error found by the City Council in the Commission's prior determination.

B. The appeal hearing may be conducted in a room other than the regular City Council chambers (e.g. the Fireside Room at the Hesse Park Community Center). The establishment of specific time allotments for speakers is optional and may be set or waived by the Mayor at the Mayor's discretion. The room may be arranged in a manner that promotes a "round table" discussion among the involved parties.

VIII. VIEW PRESERVATION

With regard to foliage obstructing a view after the issuance of a View Restoration Permit or upon the effective date of the Ordinance (November 17, 1989), Section 17.02.040(B)(3) of the Municipal Code states:

"Foliage Obstruction. No person shall significantly impair a view from a viewing area of a lot:

a. By permitting foliage to grow to a height exceeding the height determined by the View Restoration or Planning Commission

through the issuance of a View Restoration Permit under subsection C.2 of this section; or

b. If no View Restoration Permit has been issued by the View Restoration Commission or Planning Commission, by permitting foliage to grow to a height exceeding the lesser of:

(i) The ridge line of the primary structure on the property, or

(ii) Sixteen (16) feet.

If foliage on the property already exceeds the provisions of subdivisions (i) and (ii) referenced above on the effective date of this Section, as approved by the voters on November 7, 1989, and significantly impairs a view from a viewing area of a lot, then notwithstanding whether any person has sought or obtained issuance of a view restoration permit, the foliage owner shall not let the foliage exceed the height existing on the effective date of this section (November 17, 1989). The purpose of this paragraph is to ensure that the owners of foliage which violates the provisions of this paragraph on the effective date of this section shall not allow the foliage to increase in height. This paragraph does not 'grandfather' or otherwise permit such foliage to continue to block a view."

A. View Preservation After the Issuance of a View Restoration Permit (Maintenance Trimming)

1. After the issuance of a View Restoration Permit (VRP) and the initial foliage trimming and/or removal has been completed in accordance with the approved permit, Staff shall document the restored view through the use of color or black and white photography or other method approved by the Commission. The photographic documentation shall be made part of the City's permanent records and shall be kept on file at the Planning, Building and Code Enforcement Department. Once the initial work associated with an approved View Restoration Permit is performed and the restored view is documented with a photograph, the photographic documentation of the restored view shall be used as a benchmark by City Staff for making a determination of significant view impairment in any future view preservation enforcement actions that become necessary.

Upon receipt of a complaint from a View Restoration Permit (VRP) applicant or the subsequent owner of an applicant's property, that foliage subject to a VRP decision has exceeded the height limit imposed by a View Restoration Permit, City Staff shall visit the site and examine the photographic documentation on file or other evidence to determine whether the foliage has been maintained in a manner that is consistent with the approved View Restoration Permit (VRP). If foliage which is the subject of an approved VRP exceeds the height limits prescribed in the approved VRP, the City shall order that the foliage owner bring the foliage into compliance within 30 days. If the foliage owner does not comply within the specified time, the City will impose

a fine (established by Council Resolution) and the matter will be forwarded to the City Attorney's office. Alternatively, if the foliage does not exceed the height limits prescribed in the approved VRP, the City will impose a fine (established by Council resolution) against the applicant. If City Staff determines that the foliage is in compliance with the VRP, no further action will be taken in response to the complaint. Unless specified in a Commission approved long-term maintenance schedule, a property owner shall be limited to filing a complaint about foliage subject to an approved VRP, without payment of a fee a maximum of once every twelve (12) months. If a property owner wishes to file a complaint more frequently than once every twelve (12) months, the property owner may do so upon payment of a fee established by City Council Resolution.

2. If foliage not subject to the View Restoration Permit subsequently grows into the VRP applicant's documented view, said new foliage shall be considered significant view impairing foliage. Upon notification from a property owner that the new foliage has grown into the documented view, Staff will visit the VRP applicant's property to verify that the new view-impairing foliage is not in compliance with the foliage conditions shown in the documented photo. If such a situation is found, then Staff shall issue a written notice to the foliage owner informing him/her that Staff has verified that the documented view is significantly impaired by foliage on the property. Such notice shall require that the foliage owner trim or remove the offending foliage to the condition shown in the documented view photograph on file with the City, within 30 days of receiving such notice.

3. If the maintenance trimming described in Sections VIII-A2 and A3 is not completed by the foliage owner as specified by City Staff, within the stipulated time periods, then the City of Rancho Palos Verdes will utilize the City's code enforcement process to authorize a bonded tree service to perform the work at the subject property at the foliage owner's expense. In the event that the City is required to perform the work, the foliage owner will be billed for all City expenses incurred in enforcing the View Restoration permit. If the foliage owner does not pay the invoice, a lien or assessment may be recorded against the foliage owner's property, pursuant to Title 8, Chapter 24 of the Rancho Palos Verdes Municipal Code.

B. View Preservation In Absence of a View Restoration Permit

1. An owner of foliage is responsible for protecting any right he or she has to exceed the foliage height limitations that went into effect on November 17, 1989, by submitting the appropriate documentation, which can include photographs.

2. The property owner wishing to protect his/her existing view is responsible for submitting: 1.) documentation of the view, as it existed on or after the effective date of the Ordinance; and/or 2.) documentation of the view impairing foliage as it existed on November 17, 1989. Documentation shall consist of the submittal of a "Documentation of Existing View or Foliage" Form (attached) accompanied by color or black and white photographs, which clearly provide evidence that accurately depicts the

view and/or foliage as it existed from the property owner's viewing area on the date the photograph was taken. The submitted documentation shall be verified by City Staff with a visit to the view impaired site. If Staff is able to verify that the photographs accurately depict the view from the property owner's viewing area, as defined in these Guidelines, then the property owner's photographs will be incorporated into the City's files. If said photographs do not accurately depict the view from the "viewing area", then Staff will advise the property owner that the documentation has been rejected. Any verified photographs will be kept on file in the Department of Planning, Building, and Code Enforcement and shall be used as a bench mark in future view preservation enforcement actions.

3. Once documentation of a view and/or foliage has been submitted to the City and verified by City Staff, a property owner may file a Notice of Intent to File a View Preservation Application requesting one of the following view preservation actions:

a. That foliage which exceeded the lesser of: a) the ridgeline of the primary structure on the property; or 2) sixteen (16) feet, and significantly impaired the view from a viewing area of a lot on November 17, 1989 be trimmed to the height that existed on November 17, 1989, as shown in the submitted and verified documentation;

b. That foliage which has grown into a property owner's view, as documented and verified by City Staff on or after the effective date of the ordinance (November 17, 1989), and significantly impairs the view from a viewing area of the lot, be trimmed so as to eliminate the significant view impairment.

4. Upon receipt of a Notice of Intent to File a View Preservation Application, Staff will visit the applicant's property to verify if there is a significant impairment and to eliminate the need to proceed further in the process if there is no significant view impairment. If a significant view impairment is found, then Staff shall issue a written notice to the foliage owner informing him/her that Staff has verified that the documented view is significantly impaired by foliage on the property, and such notice shall request that the foliage owner trim or remove the offending foliage to the condition shown in the provided documented view photograph within 30 days of receiving such notice

a. If the foliage owner voluntarily performs the necessary work within 30 days of receiving notice, then no further permit processing shall be required.

b. If no work is performed within 30 days of receiving the notice, then the applicant may file a formal application. Once a formal View Preservation Permit application has been submitted, a Notice of the Director's Determination shall be issued to the applicant and foliage owner(s) giving the foliage owner ninety (90) days to perform the necessary work.

c. The Director may require that a long-term foliage maintenance schedule be incorporated into the conditions of approval of an approved View

Preservation Permit. The purpose of the maintenance schedule is to dictate the minimum frequency of future trimming (i.e. semi-annual, annual or biennial) based on the growth rates of the subject foliage so as to not significantly impair a view. Alternatively, the Director may specify the amount of allowable growth as measured with respect to a fixed point of reference that will not significantly encroach into the view, and require that when this point is reached, the foliage owner may be required to trim the foliage back to the height established by the Director. In establishing the maintenance schedule, the Director may take into account seasonal dormant periods of the subject foliage, when trimming is least harmful to the foliage.

d. The Director's Determination may be appealed to the Planning Commission by the applicant, the foliage owner or any interested party by filing a written appeal and submitting the appropriate fee, as established by City Council resolution, to the City within fifteen (15) days of the receipt of the Director's Determination Notice. Prior to the public hearing, Commissioners shall conduct a site visit to the applicant's property pursuant to Section IV (E)(5). Commissioners will also visit the foliage owner's property if requested in writing to do so by the foliage owner(s). The decision of the Commission may be appealed to the City Council by the applicant, the foliage owner or any interested party by filing a written appeal and submitting the appropriate fee, as established by City Council resolution, to the City within fifteen (15) days of the Commission's decision.

5. Once the appeal process has been exhausted, the City's View Preservation Determination Decision shall be final. If the City's final determination is that view preservation action is warranted on a particular property, the foliage owner shall be responsible for trimming the foliage, at his/her expense, as so ordered by the City. If the required work as specified herein is not completed, as verified by Staff, within the stipulated time periods, then the City of Rancho Palos Verdes will utilize the City's code enforcement process to authorize a bonded tree service to perform the work at the subject property at the foliage owner's expense. In the event that the City is required to perform the work, the foliage owner will be billed for all City expenses incurred in enforcing the View Preservation permit. If the foliage owner does not pay the invoice, a lien or assessment may be recorded against the foliage owner's property, pursuant to Title 8, Chapter 24 of the Rancho Palos Verdes Municipal Code.

If the City's final determination in response to an application is that view preservation action is not warranted on a particular property, no further action by the foliage owner is necessary in response to the filed application.

6. Once the initial work associated with a formal View Preservation decision is performed, Staff will document the applicant's view with photographs taken from the applicant's viewing area with a standard camera lens that will not alter the actual image that is being documented from the viewing area. The photographs will be kept on file with the City and copies shall be given to all involved parties to use for future trimming purposes.

7. The filing of an application by a property owner requesting a view preservation action without payment of a fee shall be limited to a maximum of once every twelve (12) months. If a property owner wishes to file an application more frequently than once every twelve (12) months, the property owner may do so upon payment of a fee established by City Council Resolution.

8. Upon receipt of a written complaint from a View Preservation Permit (VPP) applicant or the subsequent owner of an applicant's property, that foliage has exceeded the height limit imposed by a View Preservation Permit, City Staff shall visit the site and examine the photographic documentation on file or other evidence to determine whether the foliage has been maintained in a manner that is consistent with the approved View Preservation Permit (VPP). If foliage, which is the subject of an approved VPP, exceeds the height limits prescribed in the approved VPP, the City shall order that the foliage owner bring the foliage into compliance within 30 days. If the foliage owner does not comply within the specified time, the City will impose a fine (established by Council Resolution) and the matter will be forwarded to the City Attorney's office. Alternatively, if the foliage does not exceed the height limits prescribed in the approved VPP, the City will impose a fine (established by Council resolution) against the applicant. If City Staff determines that the foliage is in compliance with the VPP, no further action will be taken in response to the complaint.

C. Review Criteria for View Preservation Applications in the Absence of a View Restoration Permit

In order for a View Preservation Application to be approved, the Director of Planning, Building and Code Enforcement must make the following five findings:

1. The applicant has complied with the early neighbor consultation process and has shown proof of cooperation on his/her part to resolve conflicts.

a. Each applicant must provide evidence of early neighbor consultation with each foliage owner, utilizing the process described below.

b. Evidence of adequate early neighbor consultation shall consist of each applicant filing a "Notice of Intent to File a View Preservation Application" with the City prior to the submittal of a formal View Preservation Application. Said notice shall be on a form provided by the City and shall be signed by the owner of the applicant's property. Each applicant shall indicate, by marking the appropriate box on the "Notice of Intent to File a View Preservation Permit Application" that the applicant has made an attempt to contact the foliage owner prior to submittal and shall submit written proof of that attempt in the form of a copy of a registered letter and the return receipt.

(1). Upon receipt of a signed and complete Notice from an applicant, the Director of Planning, Building and Code Enforcement shall provide written notification to each foliage owner listed in the Notice, via certified mail, of the pending application. The City's notification letter shall also request that each foliage owner trim

or remove the offending foliage to the height and condition shown in the provided documented view photograph within 30 days of receiving such notice.

(2). Once an applicant submits a "Notice of Intent to File a View Preservation Permit Application", and the City provides notification to a foliage owner of the pending application, the early neighbor consultation process shall be deemed to be terminated and the applicant(s) may immediately file a formal View Preservation Application with the City if the foliage owner fails to voluntarily perform the work within 30 days of receiving written notice from the City.

(3). If an appeal hearing is necessary, the applicant may be asked to explain his/her specific efforts to comply with the ordinance requirement for attempting to resolve conflict.

2. Foliage exceeding sixteen (16) feet or the ridge line of the primary structure, whichever is lower, significantly impairs a view from the applicant's viewing area, whether such foliage is located totally on one property, or when combined with foliage located on more than one property.

a. After the location of the "viewing area" on the applicant's property is determined, the Director must find whether foliage, which exceeds the lower of sixteen feet or the ridge line of the primary structure, significantly impairs a view from the "viewing area".

b. To determine which of the two measurements referenced in the paragraph above is the lowest, the sixteen (16) foot height measurement shall be measured from the base of the plant or tree (where it emerges from the ground).

c. For structures with multiple roofline heights that would block the view if the foliage were not present, foliage on the property shall be lowered to the roofline of that portion of the structure that otherwise would block the view. Where a structure with multiple roofline heights does not otherwise block a view, foliage on the property shall be trimmed to the applicable height limit set forth in this paragraph 2.

d. Section 17.76.030 of the City's Development Code limits the height of hedges. A "hedge" is defined by the Code as "shrubbery or trees planted and maintained in such a manner as to create a physical barrier." A hedge can be included in a View Preservation Permit application, if the top of the hedge exceeds sixteen feet in height or the ridge line of the primary structure, whichever measurement is lower. In such cases, the Director may require a hedge to be trimmed to the lesser of sixteen (16) feet or the ridge line of the primary structure, if necessary to restore the view. However, if the top of the hedge is below sixteen feet or the ridge line of the primary structure, whichever measurement is lower, these cases shall be referred to the City's Code Enforcement Division for resolution. Foliage which is determined by the Los Angeles County Fire Department to be a fire hazard also shall be referred to the City's Code Enforcement Division for immediate resolution.

e. The Director shall only take action on foliage which significantly impairs a view from the applicant's viewing area. Foliage which does not significantly impair a view may remain in the applicant's view frame. The following criteria may be used to help determine whether a view is being "significantly" impaired by foliage:

(1). Foliage Position Within the View Frame. Foliage that is located in the center of a view frame is more likely to be found to create a significant view impairment than foliage located on the outer edge of a view frame.

(2). Single-component View vs. Multi-component View. Some view frames contain a combination of different view components, such as a view of the ocean, harbor and City lights (multi-component view); while some view frames consist entirely of one component, such as only a view of the ocean (single-component view). Foliage that entirely obscures one of the components of a "multi-component" view is more likely to be found to create a significant view impairment than foliage that impairs the same degree of view of a "single-component" view (see attached diagram).

(3). Prominent Landmarks. Greater weight should be given to prominent landmarks or other significant features in the view frame such as the Vincent Thomas Bridge, harbor, shoreline, distant mountain areas, city skylines, and Channel Islands. As a result, foliage which impairs a view of any of these landmarks is more likely to be found to create a significant view impairment.

3. "The foliage to be removed is located on property, any part of which is less than one thousand (1,000) feet from the applicant's property line."

Staff from the Department of Planning, Building and Code Enforcement will determine the distance from the applicant's property line to the nearest property line of the site containing the foliage under consideration.

4. The foliage significantly impairing the view did not exist as view impairing vegetation in November 1989 or thereafter.

5. Removal or trimming of the foliage will not cause an unreasonable infringement of the privacy of the occupants of the property upon which the foliage is located."

a. The burden of proving an "unreasonable infringement of indoor and/or outdoor privacy" shall be on the foliage owner. The Director will make a determination on a case-by-case basis.

b. Given the variety and number of options which are available to preserve indoor privacy, greater weight generally will be given to protecting outdoor privacy than to protecting indoor privacy.

REGULATIONS PRESERVING VIEW AND ACCESS TO SUNLIGHT

CITY OF TIBURON

TITLE IV LAND IMPROVEMENT AND USE

Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

15-1 Purpose and principles.

15-2 Definitions.

15-3 Rights established.

15-4 Unreasonable obstruction prohibited.

15-5 Criteria for determining unreasonable obstruction.

15-6 Criteria for determining appropriate restorative action.

15-7 Types of restorative action.

15-8 Town guidelines concerning restorative action.

15-9 Process for resolution of obstruction disputes.

15-10 Tree claim preparation.

15-11 Binding arbitration.

15-12 Litigation.

15-13 Apportionment of costs.

15-14 Liabilities.

15-15 Limitations.

15-16 Trees on town-owned property.

15-1 Purpose and principles.

(a) The purposes of this chapter are to:

(1) Establish the right of persons to preserve views or sunlight which existed at any time since they purchased or occupied a property from unreasonable obstruction by the growth of trees.

(2) Establish a process by which persons may seek restoration of such views or sunlight when unreasonably obstructed by the growth of trees or other vegetation (see definition of "Tree").

(b) The rights and the restorative process are based upon the following general principles:

(1) The town recognizes that residents, property owners and businesses cherish their outward views from the Tiburon Peninsula, and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The town recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in Tiburon, and promote the general welfare of the entire community.

(2) The town also recognizes the desire of many of its residents, property owners and businesses for beautiful and plentiful landscaping, including trees. The town realizes that this desire may sometimes conflict with the preservation of views and sunlight, and that disputes related to view or sunlight obstruction are inevitable.

(3) Owners and residents should maintain trees on their property in a healthy condition for both safety reasons and for preservation of sunlight and outward views. Before planting trees, owners and residents should consider view and sunlight blockage potential, both currently and at tree maturity. Persons have the right to seek civil remedies when threatened by dangerous tree growth.

(4) The town shall establish a process by which persons may seek to preserve and restore views or sunlight which existed at any time since they purchased or occupied property from unreasonable obstruction by the growth of trees. The town shall also establish a list of factors to be considered in determining appropriate actions to restore views or sunlight.

(5) When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means, such as discussions with the appropriate neighborhood or homeowner association. Those disputes which are not resolved through such means shall follow the procedure established herein.

(6) It is the intent of the town that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the town to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter. (Ord. No. 379 N.S., § 3 (part))

15-2 Definitions.

For the purpose of this chapter, the meaning and construction of words and phrases is as follows:

"Active use area" means the most frequently occupied portion or portions of a commercial building from which views are available.

"Arbitrator" means a neutral person who will conduct a process similar to a trial, and who will hear testimony, consider evidence, and make a binding decision for the disputing parties.

"Binding arbitration" means a legal procedure as set forth in section 1280 et seq. of the Code of Civil Procedure.

"Complaining party" means any property owner (or legal occupant with written permission of the property owner) who alleges that trees located on the property of another person are causing unreasonable obstruction of his or her pre-existing views or sunlight.

"Mediator" means a neutral, objective third person who assists people in finding mutually satisfactory solutions to their problem.

"Person" means any individual, corporation, partnership, firm or other legal entity, excluding the Town of Tiburon.

"Primary living area" means the portion or portions of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living area is to be made on a case-by-case basis.

"Protected tree" means any of the following:

"Heritage tree," meaning any tree which has a trunk with a circumference exceeding sixty inches, measured twenty-four inches above the ground level.

"Oak tree," including coast live oak, blue oak, California black oak, interior live oak, canyon live oak, Engelmann oak or valley oak tree.

"Dedicated tree," meaning a tree of special significance so designated by resolution of the town council.

"Removal" means the elimination of any tree from its present location.

"Restorative action" means any specific requirement to resolve a tree dispute.

"Stump growth" means new growth from the remaining portion of the tree trunk, the main portion of which has been cut off.

"Sunlight" means the availability of direct or indirect sunlight to the primary living area of a residence.

"Thinning" means the selective removal of entire branches from a tree so as to improve visibility through the tree and/or improve the tree's structural condition.

"Topping" means elimination of the upper portion of a tree's trunk or main leader.

"Tree" means any woody plant with the potential to obstruct views or sunlight, including but not limited to trees, shrubs, hedges, and bushes. References to "tree" shall include the plural.

"Tree claim" means the written basis for arbitration or court action under the provisions of this chapter.

"Tree owner" means any person owning real property in Tiburon upon whose land is located a tree or trees alleged by a complaining party to cause an unreasonable obstruction.

"Trimming" means the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance.

"View" means a scene from the primary living area of a residence or the active use areas of a nonresidential building. The term "view" includes both upslope and downslope scenes, but is generally medium or long range in nature, as opposed to short range. Views include but are not limited to skylines, bridges, landmarks, distant cities, distinctive geologic features, hillside terrains, wooded canyons, ridges and bodies of water.

Some additional examples are:

(1) San Francisco Bay (including San Pablo Bay, Richardson Bay, and islands therein);

(2) The San Francisco-Oakland Bay Bridge;

(3) The Golden Gate Bridge;

(4) The Richmond-San Rafael Bridge;

(5) Mount Tamalpais;

(6) The Tiburon Peninsula or surrounding communities (including the city of San Francisco).

"Windowing" means a form of thinning by which openings or "windows" are created to restore views and or sunlight. (Ord. No. 379 N.S., § 3 (part))

15-3 Rights established.

(a) Persons shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased or occupied a property, when such views or sunlight are

from the primary living area or active use area and have subsequently been unreasonably obstructed by the growth of trees.

(b) In order to establish such rights pursuant to this chapter, the person must follow the process established in this chapter. In addition to the above rights, private parties have the right to seek remedial action for imminent danger caused by trees.

(c) All persons are advised that the alteration, removal, and planting of certain trees requires a permit under chapter 15A of the Tiburon Municipal Code (Trees). The applicability of chapter 15A should be determined prior to any action on trees. (Ord. No. 379 N.S., § 3 (part))

15-4 Unreasonable obstruction prohibited.

(a) No person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from, or sunlight reaching, the primary living area or active use area of any other parcel of property within the Town of Tiburon.

(b) Because the maintenance of views and sunlight benefits the general welfare of the entire town, any unreasonable obstruction of views or sunlight from the primary living area or active use area shall also constitute a public nuisance. (Ord. No. 379 N.S., § 3 (part))

15-5 Criteria for determining unreasonable obstruction.

The following criteria are to be considered (but are not exclusive) in determining whether unreasonable obstruction has occurred:

(a) The extent of obstruction of pre-existing views from, or sunlight reaching, the primary living area or active use area of the complaining party, both currently and at tree maturity.

(b) The quality of the pre-existing views being obstructed, including obstruction of landmarks, vistas, or other unique features.

(c) The extent to which the trees interfere with efficient operation of a complaining party's pre-existing solar energy systems.

(d) The extent to which the complaining party's view and/or sunlight has been diminished over time by factors other than tree growth. (Ord. No. 379 N.S., § 3 (part))

15-6 Criteria for determining appropriate restorative action.

When it has been determined that unreasonable obstruction has occurred, then the following unweighted factors shall be considered in determining appropriate restorative action:

(a) The hazard posed by a tree or trees to persons or structures on the property of the complaining party including, but not limited to, fire danger and the danger of falling limbs or trees;

(b) The variety of tree, its projected rate of growth and maintenance requirements;

(c) Aesthetic quality of the tree(s), including but not limited to species characteristics, size, growth, form and vigor;

(d) Location with respect to overall appearance, design or use of the tree owner's property;

(e) Soil stability provided by the tree(s) considering soil structure, degree of slope and extent of the tree's root system;

(f) Privacy (visual and auditory) and wind screening provided by the tree(s) to the tree owner and to neighbors;

(g) Energy conservation and or climate control provided by the tree(s);

(h) Wildlife habitat provided by the tree(s);

(i) Whether trees are "protected trees," as defined in section 15-2 of this chapter. (Ord. No. 379 N.S., § 3 (part))

15-7 Types of restorative action.

(a) Restorative actions include but are not limited to the following:

(1) Trimming;

(2) Thinning or windowing;

(3) Topping;

(4) Removal with replacement plantings;

(5) Removal without replacement plantings.

(b) In all cases, the documentable extent of view or sunlight existing at any time during the tenure of the present owner or legal occupant is the maximum limit of restorative action which may be required.

(c) Restorative action may include written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest. Where removal is required, replacement by appropriate species should be considered.

(d) In cases where trimming, windowing or other restorative action may affect the health of a tree which is to be preserved, such actions should be carried out in accordance with standards established by the International Society of Arboriculture for use in the state of California. (Ord. No. 379 N.S., § 3 (part))

15-8 Town guidelines concerning restorative action.

The Town of Tiburon provides the following general guidelines concerning restorative actions:

(a) Undesirable trees. By reason of their tall height at maturity, rapid growth, dense foliage, shallow root structure, flammability, breakability or invasiveness, certain types of trees have been deemed "undesirable" by the town, including Blue Gum Eucalyptus, Coast Redwood, Monterey Pine, Monterey Cypress trees, or any other tree which generally grows more than three feet per year in height and is capable of reaching a height of over thirty-five feet at maturity. When considering restorative action for "undesirable" trees, aggressive action is preferred.

(b) Protected trees. The Town of Tiburon has designated certain trees to be "protected trees," defined in section 15-2. Any alteration or removal of protected trees will require a permit from the town's planning director pursuant to chapter 15A of the Tiburon Municipal Code.

(c) Stump growth. Stump growth generally results in the hazard of weak limbs, and its protection is not desirable. When considering restorative action for stump growth, aggressive action is preferred. Restorative action which will result in future stump growth should be avoided.

(d) Trimming. Trimming is the most minor form of physical restorative action. This option is recommended when minor unreasonable obstruction has occurred, provided that ongoing maintenance is guaranteed.

(e) Thinning or windowing. When simple trimming will not resolve the unreasonable obstruction, thinning or windowing may be necessary. These should be supervised by a certified arborist.

(f) Topping. Topping as a restorative action should be used with caution. Topping can have deleterious effects on a tree's health, appearance and cost of maintenance. Topping frequently results in stump growth. Tree removal, with replacement plantings, may be a preferable alternative.

(g) Removal. Tree removal may be required where such removal is essential to preserve pre-existing views or sunlight. While normally considered a drastic measure, tree removal can be the preferred solution in many circumstances.

(h) Maintenance. Ongoing tree maintenance requirements are strongly recommended as part of restorative action in order to achieve lasting preservation of pre-existing views or sunlight.

(i) Permanence. Conditions of restorative action should be recorded and run with the land to help guarantee permanent preservation of pre-existing views and sunlight. (Ord. No. 379 N.S., § 3 (part))

15-9 Process for resolution of obstruction disputes.

The following process shall be used in the resolution of view and sunlight obstruction disputes between parties.

(a) (1) Initial reconciliation. A complaining party who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from the primary living area or active use area shall notify the tree owner in writing of such concerns.

(2) The notification should, if possible, be accompanied by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution. If personal discussions fail, neighborhood associations may be willing to assist with the resolution of the obstruction dispute.

(3) For trees located on town-owned property, see section 15-16.

(b) (1) Mediation. If the initial reconciliation attempt fails, the complaining party shall propose mediation as a timely means to settle the obstruction dispute.

(2) Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than thirty days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within ten days.

(3) It is recommended that the services of a professionally trained mediator be employed. The county of Marin provides professional mediation services at a nominal cost.

(4) The mediation meeting may be informal. The mediation process may include the hearing of viewpoints of lay or expert witnesses, and shall include a site visit to the properties of the complaining party and the tree owner. Parties are encouraged to contact immediate neighbors and solicit input.

(5) The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation. (Ord. No. 379 N.S., § 3 (part))

15-10 Tree claim preparation.

(a) In the event that the initial reconciliation process fails, and mediation either is declined by the

tree owner or fails, the complaining party must prepare a tree claim, and provide a copy to the tree owner, in order to pursue either binding arbitration or litigation under the authority established by this chapter.

(b) A tree claim shall consist of all of the following:

(1) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include but is not limited to photographic prints, negatives or slides. Such evidence must show absence of the obstruction at any documentable time during the tenure of the complaining party. Evidence to show the date of property acquisition or occupancy by the complaining party must be included;

(2) The location of all trees alleged to cause the obstruction, the address of the property upon which the tree(s) are located, and the present tree owner's name and address;

(3) Evidence of the failure of initial reconciliation, as described in section 15-9, to resolve the dispute. The complaining party must provide physical evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence;

(4) Evidence that mediation, as described in section 15-9, has been attempted and has failed, or has been declined by the tree owner;

(5) Specific restorative actions proposed by the complaining party to resolve the unreasonable obstruction. (Ord. No. 379 N.S., § 3 (part))

15-11 Binding arbitration.

(a) In those cases where the initial reconciliation process fails and where mediation is declined by the tree owner or has failed, the complaining party must offer in writing to submit the dispute to binding arbitration, and the tree owner may elect binding arbitration.

(b) The tree owner shall have thirty days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within twenty-one days, and shall indicate such agreement in writing.

(c) The arbitrator shall use the provisions of this chapter to reach a fair resolution of the tree claim and shall submit a complete written report to the complaining party and the tree owner. This report shall include the arbitrator's findings with respect to sections 15-5 and 15-6 of this chapter, a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the town attorney upon completion. Any decision of the arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure section 1280 et seq. (Ord. No. 379 N.S., § 3 (part))

15-12 Litigation.

(a) In those cases where binding arbitration is declined by the tree owner, then civil action may be pursued by the complaining party for resolution of the view or sunlight obstruction dispute under the rights and provisions of this chapter.

(b) The litigant must state in the lawsuit that arbitration was offered and not accepted, and that a copy of the lawsuit was filed with the town attorney. A copy of any order or settlement in the lawsuit shall also be filed with the town attorney. (Ord. No. 379 N.S., § 3 (part))

15-13 Apportionment of costs.

Cost of mediation and arbitration. The complaining party and tree owner shall each pay fifty

percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion for allocating costs.

Cost of litigation. To be determined by the court or through a settlement.

Cost of restorative action. To be determined by mutual agreement, or through mediation, arbitration, court judgment or settlement. (Ord. No. 379 N.S., § 3 (part))

15-14 Liabilities.

(a) The issuance of mediation findings, an arbitration report or a court decision shall not create any liability of the town with regard to the restorative actions to be performed.

(b) Failure of the town to enforce provisions of this chapter shall not give rise to any civil or criminal liabilities on the part of the town. (Ord. No. 379 N.S., § 3 (part))

15-15 Limitations.

It is not the intent of the town in adopting this chapter to affect obligations imposed by an existing easement or a valid preexisting covenant or agreement. (Ord. No. 379 N.S., § 3 (part))

15-16 Trees on town-owned property.

Trees located on town-owned property are exempt from the provisions of this chapter. Requests or complaints regarding trees located on town-owned property should be made in writing to the superintendent of public works for consideration in accordance with policies adopted by the town. (Ord. No. 379 N.S., § 3 (part))

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